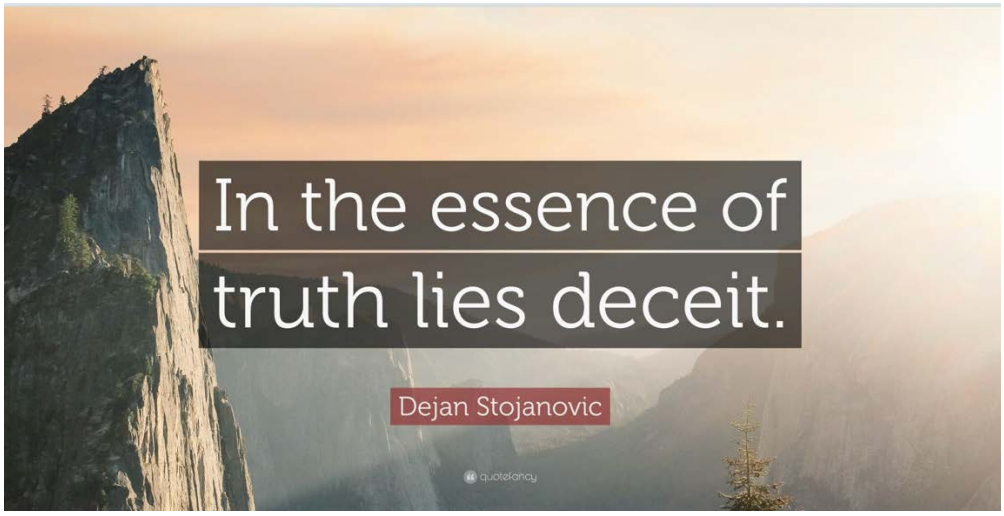
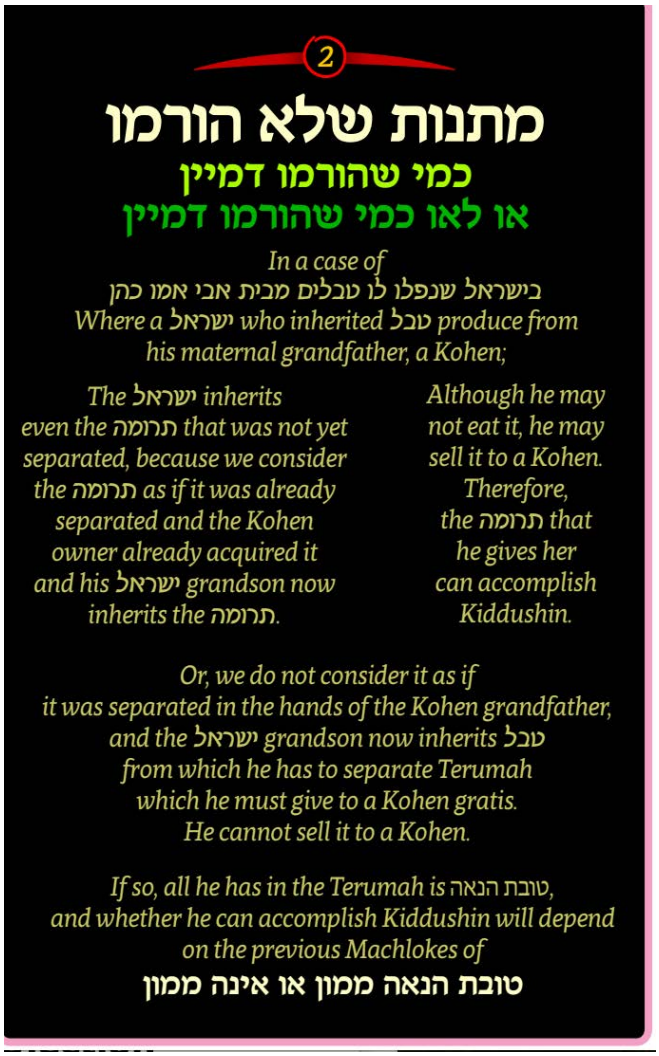
Daf Ditty Kiddushin 58:שֶׁנָּהֲגוּ בּוֹ מִנְהַג רַמָּאוּת



חרם הוא וכתיב התם °יובל היא היא אין מידי אחרינא לא : מתני' "המקדיש
בתרומות ובמעשרות ובמתנות 'ובכמי חטאת ובאפר (ג) רטאת דרי זו מקודשת
ואפילו ישראל : גמ' אמר עולא "טבת הגאה אינה כמון איתיביה רבי אבא

מַתְנִי' הַמְקַדֵּשׁ בִּתְרוּמוֹת וּבַמַּעַשְׂרוֹת, וּבַמַּתָּנוֹת, וּבְמֵי חַטָּאת, וּבְאֵפֶר חַטָּאת – הֲרֵי זוֹ מְקוּדֶּשֶׁת, וַאֲפִילּוּ יִשְׂרְאֵל.

MISHNA: With regard to **one who betroths** a woman **with *terumot*, or with tithes, or with** the foreleg, cheeks, and stomach of an animal, which are given as **gifts** to priests, **or with the water of purification,** which is sprinkled on an impure person during the purification rite for impurity imparted by a corpse, **or with the ashes of purification,** which were mixed with the water sprinkled on an impure person during the purification rite for impurity imparted by a corpse, in all of these cases **she is betrothed, and** this is so **even if** the man betrothing her is **an Israelite,** not a priest or a Levite.



גְּמָ׳ אָמַר עוּלָּא: טוֹבַת הֲנָאָה אֵינָהּ מָמוֹן. אֵיתִיבֵיהּ רַבִּי אַבָּא לְעוּלָּא: הַמְקַדֵּשׁ בִּתְרוּמוֹת, וּבְמַעֲשְׂרוֹת, וּבְמַתָּנוֹת בְּמֵי חַטָּאת, וּבְאֵפֶר פָּרָה – הֲרֵי זוֹ מְקוּדֶּשֶׁת, וַאֲפִילּוּ יִשְׂרְאֵל.

GEMARA: Ulla says: The **benefit of discretion,** i.e., the benefit accrued from the option of giving *teruma* and tithes to whichever priest or Levite one chooses, **does not have monetary** value. **Rabbi Abba raised an objection to Ulla** from the mishna: With regard to **one who betroths** a woman **with *terumot*, or with tithes, or with gifts, with the water of purification, or with the ashes** of the red **heifer, she is betrothed, and** this is so **even if** the man betrothing her, is **an Israelite.** This indicates that although an Israelite cannot consume the priestly gifts, he may nevertheless betroth a

woman with them, since he possesses the option to give them to the priest or Levite of his choice. That benefit has monetary value, and it is that value that he uses to betroth a woman, who can then give them to whichever priest or Levite she chooses.

אֲמַר לֵיהּ: הָכָא בְּיִשְׂרָאֵל שֶׁנָּפְלוּ לוֹ טְבָלִים מִבֵּית אֲבִי אִמּוֹ כֹּהֵן. וְקָא סָבַר: מַתָּנוֹת שֶׁלֹּא הוּרְמוּ כְּמִי שֶׁהוּרְמוּ דָּמְיָין.

Ulla **said to him:** You have misunderstood the case of the mishna, since **here** the case is **with an Israelite who came into** possession of **untithed produce** as an inheritance **from the household of his mother's father,** who was **a priest, and** the *tanna* of the mishna **holds** that **gifts that have not been separated are considered as though they have been separated.**

The untithed produce is not viewed as one entity, but rather is viewed as a mixture of regular produce, *teruma*, and tithes. This *teruma* belonged to his grandfather, who was a priest. Since he has inherited this *teruma*, he has ownership rights to it in addition to the benefit of discretion. While he cannot consume this produce because he is an Israelite, he can sell it to a priest and keep the money. Since it has actual value, it can be used to betroth a woman.

בְּעָא מִינֵּיהּ רַבִּי חִיָּיא בַּר אָבִין מֵרַב הוּנָא: טוֹבַת הֲנָאָה מָמוֹן אוֹ אֵינָהּ מָמוֹן? אֲמַר לֵיהּ: תְּנֵיתוּהָ: הַמְקַדֵּשׁ בִּתְרוּמוֹת וּבְמַעַשְׂרוֹת וּבְמַתָּנוֹת בְּמֵי חַטָּאת וּבְאֵפֶר פָּרָה – הֲרֵי זוֹ מְקוּדֶּשֶׁת, וַאֲפִילּוּ יִשְׂרָאֵל! אֲמַר לֵיהּ: וְלָאו אוֹקֵימְנָא בְּיִשְׂרָאֵל שֶׁנָּפְלוּ לוֹ טְבָלִים מִבֵּית אֲבִי אִמּוֹ כֹּהֵן?

With regard to this issue, **Rabbi Ḥiyya bar Avin inquired of Rav Huna:** Does the **benefit of discretion have monetary** value, **or does it not have monetary** value? Rav Huna **said to him: You learned it** in the mishna: With regard to **one who betroths** a woman **with *terumot*, or with tithes, or with gifts,** or **with the water of purification, or with the ashes** of the red **heifer, she is betrothed, and** this is so **even if** the man betrothing her, is **an Israelite.** This indicates that the benefit of discretion has monetary value. Rabbi Ḥiyya bar Avin **said to him: But didn't we establish it,** in

accordance with the opinion of Ulla, as referring **to an Israelite who came into** possession of **untithed produce** as an inheritance **from the household of his mother's father,** who was **a priest?**

אֲמַר לֵיהּ: הוּצָאָה אַתְּ. אִיכְּסִיף, הוּא סָבַר: מִשְּׁמַעְתָּא קָאָמַר לֵיהּ.

אֲמַר לֵיהּ: הָכִי קָאָמֵינָא: רַב אַסִּי דְּהוּצָל קָאֵי כְּוָתָךְ.

Rav Huna **said to him: You are out [*hotza'a*].** Rabbi Ḥiyya bar Avin **was embarrassed,** as **he thought** Rav Huna **told him** he was out, i.e., wrong, **due to** the ***halakha*** **he** stated. Sensing Rabbi Ḥiyya bar Avin's embarrassment, Rav Huna **said to him: This is what I said:** You are a *Hutzla'a*, as **Rav Asi, from** the town of **Huzal, stands in accordance with your** opinion.


הדרן עלך האיש מקדש

האומר לחביריו צא וקדש לי אשה פלונית והלך וקדשה לעצמו מקודשת
לשני וכן האומר לאשה הרי את מקודשת לי לאחר שלשים יום ובא
אחר וקדשה בתוך שלשים יום מקודשת לשני בת ישראל לכהן תאכל בתרומה
מעכשיו ולאחר שלשים יום ובא אחר וקדשה בתוך שלשים יום מקודשת
ואינה מקודשת בת ישראל לכהן או בת כהן לישראל לא תאכל בתרומה: גמ'

הָדַרַן עָלָךְ הָאִישׁ מְקַדֵּשׁ

May return to you "a man betroths"

הָאוֹמֵר לַחֲבֵירוֹ: "צֵא וְקַדֵּשׁ לִי אִשָּׁה פְּלוֹנִית", וְהָלַךְ וְקִדְּשָׁהּ לְעַצְמוֹ – מְקוּדֶּשֶׁת לַשֵּׁנִי. וְכֵן הָאוֹמֵר לְאִשָּׁה: "הֲרֵי אַתְּ מְקוּדֶּשֶׁת לִי לְאַחַר שְׁלֹשִׁים יוֹם" וּבָא אַחֵר וְקִדְּשָׁהּ בְּתוֹךְ שְׁלֹשִׁים יוֹם – מְקוּדֶּשֶׁת לַשֵּׁנִי. בַּת יִשְׂרָאֵל לְכֹהֵן – תֹּאכַל בִּתְרוּמָה.

MISHNA: With regard to **one** man **who says to another: Go and betroth so-and-so to me, and** the latter **went and betrothed her to himself, she is betrothed to the second** man. **And similarly,** with regard to **one who says to a woman: You are hereby betrothed to me after thirty days, and another** man **came and betrothed her within** those **thirty days, she is betrothed to the second** man. This is a full-fledged betrothal, so that if she is **an Israelite woman** betrothed **to a priest, she may partake of *teruma*.**

"מֵעַכְשָׁיו וּלְאַחַר שְׁלֹשִׁים יוֹם" וּבָא אַחֵר וְקִדְּשָׁהּ בְּתוֹךְ שְׁלֹשִׁים יוֹם – מְקוּדֶּשֶׁת וְאֵינָהּ מְקוּדֶּשֶׁת. בַּת יִשְׂרָאֵל לְכֹהֵן, אוֹ בַּת כֹּהֵן לְיִשְׂרָאֵל – לֹא תֹאכַל בִּתְרוּמָה.

If the first man said to the woman: You are hereby betrothed to me **from now, and** only **after thirty days** shall the betrothal take effect, **and another** man **came and betrothed her within** those **thirty days,** there is uncertainty whether **she is betrothed or** whether **she is not betrothed** to each of them. Consequently, if she was **the daughter of a non-priest** betrothed **to a priest, or the daughter of a priest** betrothed **to an Israelite, she may not partake of *teruma*.** Since her betrothal is uncertain, the daughter of a non-priest cannot be considered the wife of a priest, and similarly a priest's daughter who is doubtfully married to an Israelite loses her right to partake of *teruma* as the daughter of a priest.

גְּמָ׳ הָאוֹמֵר לַחֲבֵירוֹ ״צֵא וְקַדֵּשׁ״. תָּנָא: מַה שֶּׁעָשָׂה עָשׂוּי, אֶלָּא שֶׁנָּהַג בּוֹ מִנְהַג רַמָּאוּת. וְתַנָּא דִּידַן, ״הָלַךְ״ נָמֵי דְּקָתָנֵי – הָלַךְ בְּרַמָּאוּת.

GEMARA: The mishna teaches that in the case of **one** man **who says to another: Go and betroth** so-and-so to me, and the latter went and betrothed her to himself, she is betrothed to the second man. A *tanna* **taught** concerning this issue: **What he did is done;** it is effective and the woman is betrothed to the second man, **but he has treated him,** i.e., the first man, **in a deceitful manner,** and it is prohibited to act in this fashion. The Gemara explains: **And the *tanna* of our** mishna, **when** he **teaches** the apparently superfluous term: **Went, also** indicates that he **went** and acted **deceitfully.**

Steinsaltz

ב גמרא שנינו במשנה **שהאומר לחבירו ״צא וקדש** לי אשה **״**, והלך וקידשה לעצמו — הריהי מקודשת לשני. ומביאים, **תנא** [שנה חכם אחר בדין זה]: **מה שעשה עשוי,** שהאשה מקודשת לשליח, **אלא שנהג בו מנהג רמאות,** שאסור הדבר. ומעירים: **והתנא דידן** [שלנו] הלשון היתירה בדבריו **״הלך״** (״הלך וקידשה״) **נמי דקתני** [גם כן ששנה] כוונתו **הלך ברמאות,** שעשה שלא כראוי.

רָבִין חֲסִידָא אֲזַיל לְקַדּוֹשֵׁי לֵיהּ אִיתְּתָא לִבְרֵיהּ, קַיְּדְשַׁהּ לְנַפְשֵׁיהּ. וְהָתַנְיָא: מַה שֶּׁעָשָׂה – עָשׂוּי, אֶלָּא שֶׁנָּהַג בּוֹ מִנְהַג רַמָּאוּת! לָא יַהֲבוּהּ נִיהֲלֵיהּ. אִיבְּעִי לֵיהּ לְאוֹדוֹעֵי! סָבַר: אַדְּהָכִי וְהָכִי אֲתָא אִינִישׁ אַחֲרִינָא מְקַדֵּשׁ לַהּ.

The Gemara relates: **Ravin the Pious** was appointed an agent and **went to betroth a woman to his son,** but in the end, he **betrothed her to himself.** The Gemara raises a difficulty: **But isn't it taught** in the aforementioned *baraita*: **What he did is done, but he has treated him in a deceitful manner?** How could a pious individual act in this fashion? The Gemara answers: The woman's family **would not give her to** the son and agreed

only to let her marry the father. The Gemara further asks: Even so, before betrothing her **he should have** first **informed** his son that they refuse to let her marry him. The Gemara explains that Ravin **thought: In the meantime,** while I am busy reporting back to my son, **someone else** will **come** and **betroth her.**

RASHI

ומקשינן איבעי ליה לאודועיה - להוציא עצמו
מן מנהג רמאות:

Rabin is ironically called "pious" even though his actions don't seem all that pious. He is supposed to betroth a woman for his son, but then decides he's going to betroth her for himself. The Talmud asks how Rabin could do such a thing. His excuse is that the men giving the woman away in betrothal (the brother, the father?) did not want to give her to the son, they wanted the father. And he was afraid that if he went back to his son and told him about what was happening, the girl would meanwhile be given to another.

Summary

3) **MISHNAH:** The Mishnah discusses the validity of kiddushin when different unusual items are given to effect kiddushin.

4) **טובת הנאה — The benefit of gratitude**

Ulla asserts that the benefit of gratitude is not worth money.

R' Abba unsuccessfully challenges this ruling.

R' Chiya bar Avin asked R' Huna whether benefit of gratitude is worth money.

R' Huna answered that it is worth money.

R' Chiya bar Avin unsuccessfully challenged R' Huna's proof.

It is suggested that the question of whether the benefit of gratitude is worth money is subject to a dispute amongst Tannaim.

Four alternative ways to explain the Baraisa are presented.

A contradiction between our Mishnah and a Mishnah in Bechoros is noted.

Abaye reconciles the contradiction.

הדרן עלך האיש מקדש

Mishnah Kiddushin 2:10[1]

With regard to **one who betroths** a woman **with *terumot*, or with tithes, or with** the foreleg, cheeks, and stomach of an animal, which are given as **gifts** to priests, **or with the water of purification,** which is sprinkled on an impure person during the purification rite for impurity imparted by a corpse, **or with the ashes of purification,** which were mixed with the water sprinkled on an impure person during the purification rite for impurity imparted by a corpse, in all of these cases **she is betrothed, and** this is so **even if** the man betrothing her is **an Israelite,** not a priest or a Levite.

Introduction [2]

In this mishnah we learn about a man who betroths a woman using certain things from which it is not prohibited to derive benefit.

If he betroths with terumot, tithes, priestly gifts, the water of purification or the ashes of purification behold she is betrothed, even if he is an Israelite.

Terumot: Terumah can only be eaten by a priest. A priest can use terumah for betrothal and then the woman may sell it. However, even an Israelite can potentially own terumah. For instance, if someone's maternal grandfather is a priest, he is not a priest because the priesthood is not inherited through his mother. In such a case he will inherit from his grandfather, if his mother inherits from her father and then dies. The non-priest cannot eat the terumah which he inherits, but he can sell it. He could also use it for betrothal and then the woman can sell it. He would have to tell her that it is terumah, because terumah is less valuable than regular food.

Tithes: These are given to the Levite, who may use them for betrothal. An Israelite can use them for betrothal in the same way described above. Priestly gifts: This refers to parts of non-sacred animals given to priests (see Deuteronomy 18:3). The priest can use them as betrothal money and if they come into the hands of an Israelite, he too can use them. The water and ash of purification: To purify someone who came into contact with a dead body, they would burn the red heifer and put its ash into water.

[1] https://www.sefaria.org/Kiddushin.58a.13?lang=bi&with=Mishnah%20Kiddushin&lang2=en

[2] https://www.sefaria.org/Kiddushin.58a.13?lang=bi&p2=Mishnah_Kiddushin.2.10&lang2=bi&w2=English%20Explanation%20of%20Mishnah&lang3=en

According to the Talmud, our mishnah refers to someone who betroths with payment he received for drawing the water or for bringing the dust. One cannot betroth with the water or has itself because there is no financial benefit to be derived from them. I should note that I have explained that an Israelite cannot betroth with terumot or tithes that he separates from his own produce. Such gifts must be given for free directly to a priest or Levite.

However, it is possible to explain that the mishnah is referring to the tithes or terumot that an Israelite himself separates from his produce. The Israelite has the benefit of being able to give such gifts to whichever priest or Levite he so desires. This benefit is worth money for it will make the priest or Levite look favorably upon him. It is with this benefit that he is betrothing the woman. She now has the benefit of giving the terumot or tithes to anyone she wishes. While this may be a small benefit, remember, it only takes a perutah.

Introduction to Perek III[3]

And Moses said to them: If the children of Gad and the children of Reuben pass over the Jordan with you, every man armed for battle, before the Lord, and the land shall be subdued before you, then you shall give them the land of Gilead for a possession. But if they will not pass over with you armed, they shall have possessions among you in the land of Canaan. (Numbers 32:29–30)

This chapter deals with three topics: The conditions stipulated between a man and woman at the time of their betrothal; betrothals concerning which there is uncertainty with regard to the identity of one of the partners; and principles with regard to permitted and forbidden betrothals, those that are valid and those that are not.

This chapter provides a fundamental analysis of the halakhot of conditions in general: How must a condition be formulated for it to be binding? It also discusses the meaning of various conditions stipulated at the time of a betrothal. One case concerns a condition that the betrothal take effect after a certain period of time or after a change in the personal status of the man or woman. These discussions focus on both the precise formula of the condition as well as the woman's status between the moment of the betrothal and the date when it goes into effect.

Another matter addressed in this chapter is situations where the identity of one member of the couple is uncertain. An uncertainty of this kind can result either due to the failure of one partner to clarify fully whom he is betrothing,

[3]https://www.sefaria.org/Kiddushin.58b.12?lang=bi&with=Introduction%20to%20Perek%20III|Essay&lang2=en

which is especially likely to occur when the betrothal is performed by means of an agent, or when the claim of a man to have betrothed a woman is denied by her. There are two aspects to these problems: First, the precise meaning of various statements expressed at the time, and second, the credibility of the claimants. To what extent can the statement of one person be relied upon, and to what extent does his claim obligate him?

The third main subject of this chapter, which is discussed in detail, concerns the question of who is eligible for betrothal. Certain betrothals are entirely permitted. Others are valid despite the fact that they involve a prohibition. In other words, the halakhot of marriage are binding upon the couple, but due to the prohibition entailed in their relationship it is not permitted for them to remain together. Instead, the husband is obligated to give his wife a bill of divorce. Incidental to this issue, the chapter analyzes another important matter, which is closely connected with the topic of the tractate: What is the halakhic status of the offspring of various unions, both permitted and forbidden ones?

Summary of Perek III[4]

With regard to conditions in general, the principle is that all conditions must be modeled after the example given in the Bible concerning the tribes of Gad and Reuben. Specifically, the condition must be stated before the action to which it refers. Furthermore, it must be a compound condition, i.e., one must detail what will happen both if the condition is fulfilled and if it remains unfulfilled. In addition, the positive formulation of the condition must precede its negative side. Finally, it must be possible for the condition to be performed by means of an agent. One important aspect here is the language of the condition, since if the person specifying the condition uses the phrase: On the condition, none of the above stipulations apply.

With regard to betrothal, both the man and woman can stipulate that the betrothal take effect only at a later stage. Nevertheless, there is a difference between a case in which they stipulate that the betrothal not go into effect until a later date, and a case where they stipulate that the betrothal should be effective: From now and after a certain period of time. In the former case, there is no betrothal at all until that later date, and the woman can betroth herself to another man in the meantime. In the latter case, if the woman accepts a betrothal from someone else before that time arrives, it is uncertain which of the two betrothals is valid.

[4] https://www.sefaria.org/Kiddushin.58b.12?lang=bi&with=Summary%20of%20Perek%20III|Essay&lang2=en

All conditions appended to a betrothal are examined in accordance with the situation at the time of the betrothal. A betrothal is not valid if it is made dependent upon a state of affairs that does not exist at the time, including a change in the family or halakhic status of the man or woman.

In a situation where the betrothal itself is uncertain, if one of the parties says he knows for sure what occurred and the other side does not deny his claim, the first party is deemed credible. If the other party denies his account, the statement of the first person is effective only insofar as it renders him forbidden to all those people to whom he would be forbidden assuming his claim were true. This is because a person has the right to declare himself forbidden. The other party remains unaffected by his claim.

The Torah grants a father credibility with regard to his minor daughter, and therefore any statement he issues concerning her betrothal or divorce is binding. Likewise, a father is believed with regard to the ages and competence of his children, and he can also declare a particular son his firstborn.

This chapter included the main principles concerning the halakhot of betrothal and lineage. If one of the partners to a betrothal is not a member of the Jewish people, e.g., a Canaanite slave or a gentile, the betrothal is entirely ineffective. In this case, the lineage of the offspring follows the mother, which means that the child of a gentile father and a Jewish mother is a Jew. If the members of a couple are forbidden to each other with the punishment of karet, their offspring is a mamzer, with the exception of one who engages in sexual intercourse with a menstruating woman. In all other cases the betrothal is valid, even if it is prohibited by the Torah. As far as the offspring of these unions are concerned, if the betrothal was entirely permitted then the children's lineage follows that of the father. The exception to this principle is the case of two mamzerim who married one another, as, although the match is permitted, their child is also a mamzer. If the betrothal is forbidden, the lineage of the offspring is like that of the parent with the flawed lineage.

Mishnah Kiddushin 3:1[5]

With regard to **one** man **who says to another: Go and betroth so-and-so to me, and** the latter **went and betrothed her to himself, she is betrothed to the second** man. **And similarly,** with regard to **one who says to a woman: You are hereby betrothed to me after thirty days, and another** man **came and betrothed her within** those **thirty days, she is**

[5] https://www.sefaria.org/Kiddushin.58b.12?lang=bi&with=Mishnah%20Kiddushin&lang2=en

betrothed to the second man. This is a full-fledged betrothal, so that if she is **an Israelite woman** betrothed **to a priest, she may partake of *teruma*.** If the first man said to the woman: You are hereby betrothed to me **from now, and** only **after thirty days** shall the betrothal take effect, **and another** man **came and betrothed her within** those **thirty days,** there is uncertainty whether **she is betrothed or** whether **she is not betrothed** to each of them.

Consequently, if she was **the daughter of a non-priest** betrothed **to a priest, or the daughter of a priest** betrothed **to an Israelite, she may not partake of *teruma*.** Since her betrothal is uncertain, the daughter of a non-priest cannot be considered the wife of a priest, and similarly a priest's daughter who is doubtfully married to an Israelite loses her right to partake of *teruma* as the daughter of a priest.

Introduction [6]

The first section deals with a person who sends an agent out to betroth a woman on his behalf and then the agent betroths the woman to himself. The second section deals with a man who betroths a woman but sets the betrothal date to occur in thirty days. The question is, if someone else betroths her within those thirty days, is she betrothed to the first man or to the second?

If he says to his fellow, "Go out and betroth me such-and-such a woman," and he goes and betroths her to himself, she is betrothed.

Reuven sends Shimon out to betroth Rachel on his behalf. Upon seeing Rachel, Shimon decides that he himself wants to betroth her, and when he proposes betrothal, Rachel agrees. She is now betrothed to Shimon and the fact that Shimon was supposed to act as Reuven's agent is irrelevant.

Of course, we can be sure that Reuven will not be happy with Shimon and Shimon has acted shamefully with his friend (sounds like a movie plot). Nevertheless, this fact is not of legal significance.

Similarly, if he says to a woman, "Be betrothed to me after thirty days," and another comes and betroths her within the thirty days, she is betrothed to the second, [and in such cases] an Israelite's daughter [betrothed] to a priest may eat terumah.

[6] https://www.sefaria.org/Kiddushin.58a.13?lang=bi&p2=Mishnah_Kiddushin.3.1&lang2=bi&w2=English%20Explanation%20of%20Mishnah&lang3=en

The connection between this section and the previous one is that in both the woman under discussion is betrothed to the second man. In this case, Reuven betroths the woman but sets the betrothal to begin in thirty days. When Shimon betroths her within thirty days, she is betrothed to Shimon, because Reuven's betrothal has not yet begun. When the thirty days are up, Reuven's betrothal does not "kick-in", because she is already fully betrothed to Shimon. The mishnah expresses the fact that she is fully betrothed to Shimon by stating that if she is an Israelite's daughter and therefore prohibited to eat terumah, she is now fully betrothed to Shimon and if he is a priest, she may eat terumah. Where she not fully betrothed, the mishnah would not say that she can eat terumah.

[But if he says, "Be betrothed to me] from now and after thirty days," and another comes and betroths her within the thirty days, she is betrothed and not betrothed [to both]: [and in such cases] an Israelite's daughter [betrothed] to a priest, or a priest's daughter [betrothed] to an Israelite, may not eat terumah.

In this case, Reuven makes an ambiguous statement, "Be betrothed to me from now and after thirty days." It is unclear whether his betrothal begins now, or after thirty days. Alternatively, she may begin to be betrothed now but not fully betrothed until thirty days. In any case, if Shimon comes along and betroths her within the thirty days, his kiddushin is also doubtfully valid. If Reuven's betrothal has begun, then she is betrothed to Reuven and Shimon's act is irrelevant; but if Reuven's betrothal has not begun, then she would be betrothed to Shimon. Alternatively, if Reuven's betrothal has begun but not been completed, she may be betrothed to both of them at the same time. In such a situation she would be forbidden to both and require a get from both (see Gittin 7:3). If she was the daughter of a priest and one of them was an Israelite, she would no longer eat terumah lest her marriage to that man was valid. Similarly, if she is the daughter of an Israelite and one of the men was a priest, she would not eat terumah lest her marriage to that man was not valid. In other words, we act stringently and she doesn't get to eat terumah no matter what the case. Again, this is the mishnah's way of saying that she is doubtfully married to both men and not fully married to either.

SUMMARY[7]

A Behe'imah, Chayah, or Ohf (bird) of Chulin that was Shechted in the Azarah is forbidden b'Hanaah. (1)

[7] https://www.dafyomi.co.il/memdb/revdaf.php?tid=20&id=58

If a person is Mekadesh a woman with a Peter Chamor, Basar b'Chalav, or Chulin that was Shechted in the Azarah according to R. Shimon it is a valid a Kidushin, while the Chachamim disagree. (2)

R. Shimon says that Chulin which is Shehcted in the Azarah shall be burned.

If someone Shechts Chulin that is a Tere'ifah in the Azarah R. Shimon holds that it is permitted b'Hanaah while the Chachamim disagree.

If a person sells an item that is forbidden b'Hanaah and is Mekadesh a woman with the proceeds it is a valid Kidushin. (3)

If produce of Shvi'is is exchanged for other produce the other produce attains Kedushas Shvi'is, while the original produce of Shvi'is retains its Kedushah.

If produce that was exchanged for produce of Shvi'is is traded for new produce the new produce attains Kedushas Shvi'is while the other produce no longer has Kedushas Shvi'is.

If two Pasukim teach us the same Halachah it is a Machlokes if we may learn out this Halachah for other Dinim.

If a person (even a Yisra'el) is Mekadesh a woman with Te'rumah, Ma'aser or Matanos, or the water or ashes of the Parah Adumah it is a Kidushin. (4)

According to the opinion that Matanos which were not yet separated are regarded as they were separated if a Yisrael inherits produce from his grandfather who is a Kohen the Te'rumah belongs to him. (5)

It is a Machlokes if Tovas Hana'ah (the right to give something to whoever you choose) is regarded as Mamon. (6)

Rebbi says that if someone steals Tevel he must pay back for all of the Tevel including the Te’rumah and Ma’aser.

R. Yosi Bar Yehudah holds that one who steals Tevel only has to pay for the Chulin not for the Te’rumah and Ma’aser.

Shmuel says that one only kernel of wheat is sufficient for the Te’rumah of an entire mound of wheat.

If someone receives wages to judge a Din Torah or to testify, his judgments and testimony is invalid.

One may receive wages for drawing and transporting water for the Parah Adumah.

One may not receive wages for placing the ashes of the Parah Adumah n the water or for sprinkling the ashes and if he does take wages, it is invalid.

If someone sends a Shli’ach to be Mekadesh a woman for him and the Shli’ach was Mekadesh the woman for himself it is a Kidushin.

If someone gives a Kidushin to a woman for after 30 days if a second person is Mekadesh her within 30 days she is Mekudeshes to the second person. (8)

If someone gives a Kidushin to a woman retroactively from now after thirty days, if a second person is Mekadesh her within 30 days she is Safek Mekudeshes.

Notes:

(1). This applies even if the animal or bird is a Ba'al Mum.

(2). R. Shimon holds that a Peter Chamor is permitted b'Hanaah until after the Arifah and he holds that Basar b'Chalav is permitted b'Hanaah and regarding that Chulin that was Shechted in the Azarah it is referring to a case that the animal turned out to be a Tre’ifah and R. Shimon holds that a Shechitah on a Tre’ifah (or any Shechitah that doesn’t permit the animal to be eaten) is not a Shechitah and therefore

the animal is not forbidden b'Hanaah, however if Chulin that is not a Tere'ifah is Shechted in the Azarah even R. Shimon agrees that it is forbidden b'Hanaah.and one may not be Mekadesh a woman with it.

(3). Although l'Chatchilah it was forbidden to sell something that is forbidden b'Hanaah b'Dieved the proceeds are permitted b'Hanaah and therefore the Kidushn is valid, however Avodah Zorah is an exception as even the proceeds of Avodah Zorah are forbidden b'Hanaah.

(4). All of these things are permitted b'Hanaah and even though it is forbidden for a Yisrael to eat Te'rumah he may be Mekadesh a woman with it if it belongs to him, i.e. he inherited the Te'rumah from his grandfather who is a Kohen.

(5). Even though his grandfather when never separated the Matanos it is regarded as if he separated the Matanos and since he is a Kohen, the Matanos belongs to him and he may inherit them to his grandson the Matanos they belong to him even though he is a Yisrael and he may sell it to a Kohen.

(6). According to the opinion that Tovas Hana'ah is Mamon a Yisrael may be Mekadesh a woman with Te'rumah even if it doesn't belong to him and it must be given to the Kohen without payment, because the right that he has to give it to any Kohen that he chooses is worth money.

(7). However the second person is regarded as a Ramai (deceiver).

(8). WHETHER SHE IS A BAS YISRAEL AND HE IS A KOEHN OR IF SHE IS A BAS KOHEN AND HE IS A YISRAEL SHE MAY NOT EAT TE'RUMAH.

A PAID JUDGE

If someone receives wages to judge a Din Torah or to testify, his judgments and testimony is invalid. This is a Knas m'Derabbanan and it applies even if the wages were not given as a bribe. However, if he returns the wages that he received he may go ahead and testify or judge the Din Torah. However, a judge may take wages for Schar Bete'ilah (to make up for the work that he missed while he is judging the case.) Therefore if the Kehilah appoints a judge to be available at all times for any Dinei Torah that may arise, he may take a salary because the money that he receives is Schar Bete'ilah since he must be available at all times and is unable to work for a living. (Ritva)

DECEPTION

IF SOMEONE APPOINTS A SHLI'ACH TO BE MEKADESH A WOMAN FOR HIM AND THE SHLI'ACH WENT AHEAD AND WAS MEKADESH HER FOR HIMSELF IT IS REGARDED AS DECEPTION, HOWEVER THE KIDUSHIN IS EFFECTIVE AS LONG AS

HE DID NOT USE THE MONEY OF THE MESHALE'ACH FOR THE KIDUSHIN. EVEN IF THE SHLI'ACH TOLD THE WOMAN THAT PLONI SENT ME TO BE MEKADESH YOU FOR HIM AND THAN HE SUBSEQUENTLY SAID 'HAREI AT MEKUDEHSES LI' SHE IS MEKUDESHES TO THE SHLI'ACH. HOWEVER, THAT IS ONLY THE CASE OF THE WOMAN CLEARLY UNDERSTOOD THAT THE SHLI'ACH WAS BEING MEKADESH HER HIMSELF. HOWEVER, IF SHE DID NOT UNDERSTAND THAT THE SHLI'ACH WAS BEING MEKADESH HER HIMSELF HE DA'AS WHEN SHE ACCEPTED THE KIDUSHIN WAS IN ACCORDANCE WITH WHAT THE SHLI'ACH SAID ORIGINALLY. (SHULCHAN ARUCH EH 35:9)

Rav Avrohom Adler writes:[8]

Chullin in the Azarah

The Gemora cites an incident: Mar Yehudah found Rav Yosef and Rav Shmuel the son of Rabbah bar bar Chanah by the entrance of Rabbah's Beis Medrash. He said to them: It was taught in a braisa: If someone betroths a woman with a firstborn donkey, meat cooked with milk, or an unconsecrated animal slaughtered in the Temple Courtyard, Rabbi Shimon says: She is mekudeshes, and the Chachamim say: She is not.

The Gemora notes: It would seem from Rabbi Shimon that slaughtering an unconsecrated animal in the Temple Courtyard is only Rabbinically forbidden. The Gemora asks that this contradict that which Rabbi Shimon said in a Mishna: An unconsecrated animal, which was slaughtered in the Temple Courtyard, should be burned. And so too, if a wild species was slaughtered there, it must be burned.

[Now, if it would only be Rabbinically forbidden, they would not have extended this decree to a wild species, which cannot be used as a korban!?]

They remained quiet (they did not know how to answer this contradiction). They brought this challenge to Rabbah, and he told them: I see that the dissenter has baffled you.

The answer to the contradiction is as follows: When Rabbi Shimon ruled that she is mekudeshes, he was dealing with a case where the animal was found to be a tereifah, and Rabbi Shimon is following his own line of reasoning.

[8] https://dafnotes.com/wp-content/uploads/2016/05/Kiddushin_58.pdf

For we learned in a braisa: If one slaughters an animal which is a tereifah, or he slaughters it and it was found to be a tereifah, and they both were unconsecrated animals slaughtered in the Temple Courtyard, Rabbi Shimon permits the animal for benefit (for he holds that a shechitah which does not render the animal fit to be eaten is not considered a shechitah), whereas the Chachamim prohibit it.

The Exchanged Item

The Mishna had stated: If he sold these items, and married her with the money, the kiddushin is valid. The Gemora asks: What is the source for this?

The Gemora answers: The Torah writes by idolatry: and you will become banned like it; this teaches us that something which was exchanged for an item that was used for idolatry is just like it. We can infer that this does not apply by all other prohibitions.

The Gemora asks: Let us learn from idolatry that the exchanged item is also prohibited!? The Gemora answers: It is because idolatry and shemitah are two verses that teach the same thing, and therefore, we cannot learn from it. It is written by shemitah: It is a Yovel year; it should be holy to you. This teaches us that shemitah is similar to a consecrated item. Just as the exchange for a hekdesh item becomes like it, so too, the exchange for shemitah produce becomes like it.

The Gemora asks: If so, why don't we say the following: Just as by hekdesh, that which was exchanged for the hekdesh becomes like it and the hekdesh becomes deconsecrated, so too, by shemitah, that which was exchanged for the shemitah becomes like it and the shemitah produce should become chullin!?

The Gemora answers: It is written with respect to shemitah produce: it shall be. We learn from here that the shemitah produce remains as is. For example, if one bought meat with shemitah produce, the halachos of bi'ur (the produce of Shemitah may be kept as long as that produce is still available in the fields for the animals; afterwards, it may no longer remain in the house) applies to both the meat and the produce.

If he then exchanges the meat for fish, the meat loses its shemitah status and the fish acquires the sanctity of shemitah. If he then exchanges the fish for wine, the fish loses its shemitah status and the wine acquires the sanctity of shemitah. If he then exchanges the wine for oil, the wine loses its shemitah status and the oil acquires the sanctity of shemitah. The rule is that the last

item of exchange acquires the sanctity of shemitah, and the shemitah produce always remains prohibited.

Mishna

If a man betroths a woman with terumah, with ma'aser, with the presents (the foreleg, cheeks and stomach that must be given to a Kohen after a chullin animal has been slaughtered), the chatas water, or with the chatas ashes (the ashes of the parah adumah were mixed with water, and they then were sprinkled on someone who was a tamei meis in order to purify him), she is mekudeshes, and even if this man was a Yisroel (and not a Kohen).

Benefit of Gratitude

Ulla said: The "benefit of gratitude" (tovas hana'ah – the fact that a person has the right to give the matnos kehunah to whomever he wishes) is not regarded as money (and he therefore cannot betroth a woman with such things).

Rabbi Abba challenged Ulla from our Mishna: If a man betroths a woman with terumah, with ma'aser, with the presents, the chatas water, or with the chatas ashes, she is mekudeshes, and even if this man was a Yisroel. [Evidently, the "benefit of gratitude" is regarded as money!?]

Ulla replied: The Mishna is discussing a case where a Yisroel inherited tevel from his maternal grandfather, and the Tanna holds that the matanos (gift portions for the Kohen) that were not yet separated are considered as if they were separated (and therefore it is as if the grandfather separated the terumah before he died; hence, the Yisroel inherited terumah from his grandfather, and since it is his, he may betroth a woman with it).

Rabbi Chiya bar Avin inquired of Rav Huna: Is the "benefit of gratitude" regarded as money or not? He replied: This can be resolved from our Mishna: If a man betroths a woman with terumah, with ma'aser, with the presents, the chatas water, or with the chatas ashes, she is mekudeshes, and even if this man was a Yisroel.

[Evidently, the "benefit of gratitude" is regarded as money!] Rabbi Chiya bar Avin asked him: But did we not explain this Mishna to be referring to a case where a Yisroel inherited tevel from his maternal grandfather? Rav Huna replied: You are hutza'ah (you don't understand the Mishna)!"

Rabbi Chiya became embarrassed, for he assumed that Rav Huna meant that he is removed from the understanding of this topic matter. Hutzal is in agreement with you.

The Gemora comments: Let us say that this is a matter of a Tannaic dispute, for we learned in a braisa: If one steals the tevel (untithed produce) of his fellow, he is obligated to pay him for the value of the entire tevel (including the terumah and ma'aser that is mixed in, according to its value to him based upon his ability to choose who he wants to give them to).

Rabbi Yosi the son of Rabbi Yehudah says: He is only obligated to pay him for the value of the chulin. It must be that Rebbe holds that the ability to choose who to give something to has a monetary value, while Rabbi Yosi holds it does not.

The Gemora rejects this and gives an alternate explanation to their argument. Everyone agrees that the mere choice regarding who to give something to does not have a monetary value.

The braisa is discussing a case where a Yisroel inherited tevel from his maternal grandfather, and they argue if the matanos (gift portions for the Kohen) that were not yet separated are considered as if they were separated or not. Rebbe maintains that they are regarded as if they were separated (and therefore it is as if the grandfather separated the terumah before he died; hence, the Yisroel inherited terumah from his grandfather, and the thief stole the terumah from the grandson and is therefore required to compensate him for the full value of the produce).

Rabbi Yosi the son of Rabbi Yehudah holds that it is not considered as if they were separated (and therefore the grandson only has the "benefit of gratitude"; the thief, therefore, is required to pay him for the tevel, but not for the terumah and ma'aser, which is mixed in).

Alternatively, we can explain the braisa that everyone holds that the matanos (gift portions for the Kohen) that were not yet separated are considered as if they were separated, and the "benefit of gratitude" is not regarded as money, and the dispute is regarding Shmuel's ruling, for Shmuel said: One grain of wheat can exempt an entire pile (and there would be no need to separate any more terumah).

Rebbe holds of Shmuel's ruling (and the thief would be required to pay the full value, for the owner could have exempted himself with one grain of wheat), and Rabbi Yosi the son of Rabbi Yehudah does not.

Alternatively, we can explain the braisa that everyone disagrees with Shmuel's ruling, and Rebbe's reason here is that we penalize the thief (to pay for the terumah, even though, by rights, he would not be obligated to pay for it).

Alternatively, we can explain the braisa that everyone agrees with Shmuel's ruling, and Rabbi Yosi the son of Rabbi Yehudah's reason here is that we penalize the owner, for he should not have delayed in the rectifying of his tevel.

The Gemora notes the following contradiction: Our Mishna said: If a man betroths a woman with terumah, with ma'aser, with the presents, the chatas water, or with the chatas ashes, she is mekudeshes, and even if this man was a Yisroel.

Yet we learned in the following Mishna: If someone takes wages for judging, his judgments are invalid. If it is for testifying, his testimony is void. If it for sprinkling or for mixing the chatas water, the water is regarded as cave water, and the ashes are like regular ashes! [If so, how can the chatas water or ashes be used to betroth a woman? Since he wants to derive benefit from them, they should be voided!?]

Abaye answers: Our Mishna is discussing the payment for bringing the ashes and drawing the water (which is permitted because it is toil, and not regarded as part of the mitzvah). The other Mishna is discussing the payment for the sprinkling or mixing of the water (where one would be forbidden to accept payment for, since that involves the performance of the mitzvah itself).

WE SHALL RETURN TO YOU, HA'ISH MEKADESH

A Single Grain is Sufficient

Rabbi Chiya bar Avin inquired of Rav Huna: Is the "benefit of gratitude" regarded as money or not? The Gemora comments: Let us say that this is a matter of a Tannaic dispute, for we learned in a braisa: If one steals the tevel (untithed produce) of his fellow, he is obligated to pay him for the value of the entire tevel (including the terumah and ma'aser that is mixed in, according to its value to him based upon his ability to choose who he wants to give them to).

Rabbi Yosi the son of Rabbi Yehudah says: He is only obligated to pay him for the value of the chulin. It must be that Rebbe holds that the ability to choose who to give something to has a monetary value, while Rabbi Yosi holds it does not.

The Gemora rejects this and gives an alternate explanation to their argument. Everyone holds that the matanos (gift portions for the Kohen) that were not yet separated are considered as if they were separated, and the "benefit of gratitude" is not regarded as money, and the dispute is regarding Shmuel's ruling, for Shmuel said: One grain of wheat can exempt an entire pile (and there would be no need to separate any more terumah). Rebbe holds of Shmuel's ruling (and the thief would be required to pay the full value, for the owner could have exempted himself with one grain of wheat), and Rabbi Yosi the son of Rabbi Yehudah does not.

The Acharonim ask that Shmuel is only discussing the Biblical requirement, but the Chachamim instituted that one must give at least one sixtieth of his produce to the Kohen as terumah! If so, the thief should be exempt from paying the value of terumah that he is Rabbinically required to give!?

The Oneg Yom Tov answers based on the Tosfos Ri"d, who says that even Rabbinically speaking, one grain of wheat can exempt an entire pile from the prohibition of tevel. The Chachamim instituted that there is a mitzvah of giving to the Kohen. This, however, the owner could claim that he would not have given, and the thief would therefore be required to pay the entire amount.

The Mishnah Lamelech disagrees and holds that if one does not give at least one-sixtieth to the Kohen, it is Rabbinically regarded as tevel. Accordingly, the thief should not be required to pay the entire amount!?

Bilaam's Intention

When Bilaam received permission from Hashem, he proceeded to travel to Balak, in response to Balak's request that Bilaam curse the Jews. It is written: Vayichar af Hashem ki 'holech' hu - And Hashem was angry that Bilaam went.

The obvious question is asked: If he had received permission, why was Hashem angry at him? R' Moshe Wolfson shlit"an answers that we see from our Gemora that the word 'holech' has a connotation that implies deceit. The verse's use of this word tells us that Bilaam's intention was to try to deceive Hashem and that was what aroused Hashem's anger.

What Is Sacred? Why?[9]

There are three sections in ***our daf***. I am going to provide only a very brief outline of each section.

First, the rabbis discuss the differences between betrothal with consecrated animal, with non-domesticated animals, and with animals that are considered to be treifa; forbidden according to the halacha of kashrut. This section also offers a discussion about the *shemita*, the Jubilee year, and whether that change signifies a change in the status of an animal, desacralizing a once-consecrated animal (or other item).

Second, we are introduced to a new Mishna that teaches us that a woman is betrothed if she is given consecrated items like teruma, tithes, water of purification or ashes of purification. The Mishna teaches that this is the case even if the man is an Israelite and not a priest or levite. The Gemara argues these using arguments of parentage/inheritance and the right to use consecrated items, monetizing consecrated items, and laws regarding theft/counting/mixing of consecrated items. Of course, rabbis are hesitant to allow this sort of betrothal, for they are extremely protective of the maintenance of an air of sanctity around certain items.

Interestingly, today very few items could be considered to be 'sacred'. Andy Warhol's duplication of art has been transferred to almost all items. Everything is considered to be replaceable. Which means that nothing holds the same kind of weight, of importance, as it did even decades ago. Is the notion of sanctity actually dead? Or even today, in our modern, mostly secular North American communities, are we able to create and maintain sanctity of certain items? If so, which ones? Because that might be the most telling thing of all. What is sacred today?

But I digress. The third section of ***our daf*** is the beginning of Perek III (finally), which begins with a new Mishna. We are taught that if a man tells another man to betroth a woman on his behalf and the agent betroths the woman himself, she is betrothed to the first man. Similarly, if a man tells a woman that she is betrothed to him in thirty days and another man tries to betroth her within that time period, she is betrothed to the first man. She is

[9] http://dafyomibeginner.blogspot.com/2016/05/kiddushin-58-what-is-sacred-why.html

fully betrothed and if she has been engaged to a priest, she may partake of teruma. The Mishna then contradicts itself and suggests that such betrothals are uncertain. The Gemara begins to address this quandary, speaking about deceit.

THE MONETARY VALUE OF "TOVAS HANA'AH"

Rav Mordechai Kornfeld writes:[10]

Rebbi Chiya bar Avin asked Rav Huna whether "Tovas Hana'ah" (the right of the owner to give his Terumah and other Matnos Kehunah to the Kohen of his choice) is considered to have monetary value or not.

If Tovas Hana'ah is considered to have monetary value, how is its value measured? Is the monetary value of Tovas Hana'ah determined by how much a person would be willing to pay to acquire the privilege of giving Matnos Kehunah to the Kohen of his choice, or is the entire value of the produce considered to belong to the "owner" of the Tovas Hana'ah?

(a) The **RITVA** discusses this question in his comments on the Gemara's discussion about one who steals produce of Tevel. The Gemara states that if Tovas Hana'ah has monetary value, the thief must pay the owner for the value of the Terumah that was in the Tevel, in addition to the value of the non-Terumah produce. The Ritva discusses exactly how much the thief must pay. Must he pay only the exact worth of the Tovas Hana'ah, or must he pay the entire value of the Terumah, because any item for which one has the right of Tovas Hana'ah is considered to belong entirely to him?

The Ritva proves from the Mishnah that the monetary value of Tovas Hana'ah is considered the entire value of the fruits. The Mishnah states that a man, even a Yisrael, may be Mekadesh a woman with Terumah and other Matnos Kehunah. The Mishnah equates a Yisrael's ownership of fruit of Terumah to a Kohen's ownership of fruit of Terumah. A Kohen owns the actual Terumah and

[10] https://www.dafyomi.co.il/kidushin/insites/kd-dt-058.htm

certainly may use the actual value of the fruit for his own purposes. Since a Yisrael's ownership is compared to that of a Kohen, the right of Tovas Hana'ah gives him the value of the entire Terumah, the same value a Kohen has when he owns the Terumah.

Therefore, one who steals Tevel from a Yisrael must pay to the Yisrael the full value of the Terumah fruit (the same value it is worth to a Kohen).

(b) Other Rishonim disagree with the Ritva's assertion. The **RAMBAN** and **RASHBA** (and the first opinion quoted by the Ritva) maintain that the value of Tovas Hana'ah is merely the value of the right to give the Matanos to whomever he wants, and it is not the value of the Matanos themselves. Hence, when the Gemara says that the thief must remunerate the value of the Terumah that was in the Tevel he stole, it does not mean that he must pay back the full value of the Terumah (the value it is worth to a Kohen). Rather, he must pay back the value of the Tovas Hana'ah of the Terumah (which is substantially less than the Terumah's actual value).

*(The **TOSFOS RID** agrees that the value of the Tovas Hana'ah is not the same as the value of the Matnos Kehunah themselves. However, he agrees with the Ritva, albeit for a different reason (see there), that the thief must pay back the full value of the Terumah to the Yisrael.)*

KIDUSHIN PERFORMED WITH "MEI CHATAS" OR "EFER PARAH"

The Gemara states that when a man is Mekadesh a woman by giving her Mei Chatas or Efer Parah, the Kidushin is valid. The Rishonim disagree about the details of cases of Kidushin performed with Mei Chatas or Efer Parah, according to the Gemara's conclusion.

(a) **RASHI** apparently understands that the man is Mekadesh the woman with the money *she owes him* for his labor. The Mishnah refers to a case in which the woman was Teme'ah and needed Mei Chatas to become Tahor, and the man purchased it on her behalf. Since he is permitted to take payment for his services, the woman owes him that amount. When he pardons her debt, she becomes Mekudeshes to him.

(b) The **RASHBA** disagrees with Rashi for two reasons. First, according to Rashi's understanding, the case of the Gemara is a case of "Mekadesh b'Milvah," wherein the man forgives a debt which the woman owes him and says that she should become Mekudeshes to him with the debt. The Gemara (6b, 47a) teaches that such a Kidushin is not valid. In order for this case not to be a case of "Mekadesh b'Milvah," Rashi would have to rule that "Sechirus Einah Mishtalemes Ela ba'Sof" -- the money owed for labor rendered becomes a debt only after the conclusion of the work (and thus the woman does not really owe any money to the man at the time he is Mekadesh her). This, however, is the subject of dispute (see earlier, 47b).

Second, the Mishnah states, "One who is Mekadesh with Mei Chatas or with Efer Parah...," which implies that the man uses the actual item (and not the value of services rendered to obtain the item) to be Mekadesh the woman.

The Rashba explains instead that since one may use the Mei Chatas to earn money (by delivering the Mei Chatas ("Hava'ah") for the procedure of Haza'ah), it has some monetary worth. When the man gives it to the woman, it is considered as though he gives her something of monetary value since she, too, could have performed the same service and received the same fee.

A SHALI'ACH WHO BETROTHED A WOMAN TO HIMSELF

The Mishnah teaches that when one man appoints his friend as a Shali'ach to be Mekadesh a woman for him and the Shali'ach goes and is Mekadesh her to himself, the Kidushin takes effect with the Shali'ach (and not with the sender). In the Mishnah's case, the woman must be aware that the Shali'ach intends to be Mekadesh her to himself and not to the sender, because otherwise the Kidushin clearly would be a Kidushei Ta'us (Kidushin accepted in error). Why, though, does the Mishnah need to teach that the Kidushin with the Shali'ach takes effect? Since she has intent to marry the Shali'ach and the Shali'ach has intent to marry her, it is obvious that the Kidushin with the Shali'ach takes effect.

(a) **TOSFOS** explains that the Mishnah refers to the following scenario. When the Shali'ach met the woman, he introduced himself as the Shali'ach for the man who appointed him. Before he gave her the money of Kidushin, he changed his mind and decided to be Mekadesh the woman for himself. One

might have thought that when he pronounces, "Harei at Mekudesh Li" -- "You are hereby Mekudeshes to me," he still acts on behalf of the man who sent him; he uses the word "Li" ("to me") in his capacity as a substitute for the man who appointed him. The Mishnah teaches that he is assumed to refer to himself when he uses those words.

(b) The **RASHBA** and **RITVA** explain that in the case of the Mishnah, the Shali'ach did not inform the woman that he was appointed by the sender. (They infer this from the fact that the Gemara calls his act "trickery.") If the woman would have known that someone else was interested in being Mekadesh her, perhaps she would not have agreed to the Kidushin of the Shali'ach and his Kidushin should be considered a Kidushei Ta'us and not take effect. The Mishnah teaches that the Kidushin is *not* a Kidushei Ta'us and it indeed takes effect.

(c) Alternatively, one might have thought that since the Shali'ach acted improperly (with an act of "trickery," as the Gemara calls it), the Rabanan nullified the Kidushin as they did in other cases of Kidushin made improperly. Therefore, the Mishnah teaches that in this case the Kidushin indeed takes effect.

Betrothal by Agent

Steinsaltz (OBM) writes:[11]

The third *perek* of *Masesekhet Kiddushin* begins on ***our daf.*** The first Mishna presents us with a case of someone who was appointed as an agent by his friend to marry a certain woman. The Mishna teaches that if the man goes to that woman and offers her *kesef kiddushin* for himself, she will be married to him and not to the first man.

The question that is raised by the *rishonim* is why the Mishna needs to teach us this *halakha.* It would appear to be obvious that if the woman accepted the money and agreed to marry him, she is married to him and not to another! Several suggestions are raised to explain this case.

[11] https://steinsaltz.org/daf/kiddushin58/

Tosafot Ri"d suggests that we may have thought that the messenger was not serious in his proposal since we do not suspect that a Jewish person would behave in such an uncouth manner (see *Tzefaniah* 3:13). The Mishna therefore needs to tell us that such a marriage is a serious one.

The Ramban suggests that we may have thought that this case should be ruled *kiddushei ta'ut* – a mistaken marriage – since had the woman known that there was another man who wanted to marry her, perhaps she would not have agreed.

According to Tosafot, the case may be where the messenger first told her that he was representing someone else, but then said, "*Harei at mekudeshet li* – behold you are betrothed to me." The Mishna teaches that we do not assume that he was still acting as an agent if he says that.

Another approach argues that on occasion the rabbinic sages rule that someone who behaves improperly loses his right by law – and that perhaps the Sages would have negated the marriage retroactively in response to his inappropriate behavior.

Restitution by a thief who steals טבל

והכא בדשמואל קמיפלגי דאמר שמואל חיטה אחת פוטרת את הכרי

In its analysis of the final Mishnah of the second perek, Ulla explained that the reason a Yisroel may use teruma for kiddushin is that the Mishnah is speaking about a Yisroel who inherited teruma which was given to his maternal grandfather.[12]

However, the Mishnah cannot be speaking about one's own collection of teruma which was designated from his own produce and is waiting to be given to a kohen.

According to Ulla, even though the Yisroel has the privilege to decide which kohen will receive the teruma, this favor—הנאה טובת—is not recognized as a financial entity.

The Gemara tried to show that the issue whether or not הנאה טובת is ממון or not is actually a dispute between Rebbe and Rebbe Yose ben Yehuda regarding what a thief must repay if he steals untithed grain. Rebbe says the thief must

[12] https://dafdigest.org/masechtos/Kiddushin%20058.pdf

repay the full value of the grain, including the value of the teruma and ma'aser contained therein.

Rebbe apparently holds that the privilege to select the kohen who will be the recipient of the teruma amounts to financial equity. Rebbe Yose ben Yehuda rules that he need only repay the value of the חולין — the part which remains after the teruma and ma'aser are removed.

There is no value of the tithes for the Yisroel, not even in the power to determine to whom they will be distributed.

The Gemara responds that the dispute between Rebbe and Rebbe Yose ben Yehuda is regarding the halacha of Shmuel, whether one kernel is enough to exempt the entire pile.

The Achronim immediately ask that the rule of Shmuel is, at best, a Torah law, but the rabbis enacted that the amount for teruma be at least one-sixtieth.

According to the Gemara at this point, the thief should be released from at least this amount, and not have to pay the full amount about which Rebbe spoke.

Pri Yitzchok explains that rabbinically, one kernel still can exempt the entire pile, but the rabbis insisted that the farmer give at least one sixtieth (there is a requirement of נתינה).

The thief can therefore claim that he would not have fulfilled the directive to give the amount that the rabbis recommended.

Taking payment for the performance of a mitzvah

כאן בשכר הזאה וקידוש

Here we are discussing payment for transporting the ashes and drawing the water.

Even Ha'ezel (1) notes that there is a fundamental disagreement, related to our Gemara, whether it is permitted for a person to take money for the performance of a mitzvah.

Rashi (2) writes that the reason it is permitted to take wages for transporting the ashes and the drawing of the water is that it involves exertion and there

is no obligation for the kohen to exert himself for the sake of this mitzvah since someone else could also transport the ashes and draw the water.

Since this kohen is the one doing those activities, he has the right to collect payment for that mitzvah.

Tosafos Ri Hazaken (3) offers an alternative explanation. The reason it is permitted to take money for the transporting of the ashes and the drawing of the water is that these activities are only preparatory activities (מצוה הכשר) (of the mitzvah rather than the mitzvah itself, thus it is permitted to take payment for those activities.

It would seem, observes Even Ha'ezel, that Rashi and Tosafos Ri Hazaken disagree whether one is permitted ever to take money for the performance of a mitzvah.

According to Rashi, it is permitted to take money for a mitzvah that involves exertion since the Torah does not mandate the one performing the mitzvah to exert himself whereas according to Tosafos Ri Hazaken one may never take money for the performance of a mitzvah, only for the preparatory activity of the mitzvah.

Machaneh Ephraim (4) notes that there is a disagreement whether a witness is permitted to take payment for the exertion that is involved in traveling to Beis Din and testifying. Rabbeinu Simchah Hakohen maintains that one is not permitted to take payment for testifying, even if it is necessary for the witness to travel a great distance to give his testimony.

Ritva, in his commentary to our Gemara, writes that a witness is permitted to take payment for the exertion involved in giving testimony. The point of dispute seems to be related to the disagreement between Rashi and Tosafos Ri Hazaken.

Rabbeinu Simchah Hakohen subscribes to the position of Tosafos Ri Hazaken that one may never take payment for the performance of a mitzvah and thus one may not even take money for traveling to testify since that is considered part of the mitzvah to give testimony.

Ritva, on the other hand, follows the opinion of Rashi that it is permitted to take payment for the exertion involved in performing a mitzvah.

1. אבן האזל פי״ב מהל׳ גניבה ה״ג ד״ה אכן.
2. רש״י ד״ה בשכר.
3. תוס׳ ר״י הזקן בסוגייתינו.
4. מחנה אפרים הל׳ שכירות סי׳ י״ז. ■

"He acted falsely"
"אלא שנהג בה מנהג רמאות..."

A certain man met a woman he felt could be a good match for him. He was quite wealthy and she was from a fairly poor family without prospects.

Although she didn't feel that he was necessarily Mr. Right, she still agreed to become engaged to him. Around a month later, this woman met a truly wonderful man who was a superior match for her in many ways. Although she had committed to marry the first gentleman, who was older, they had not made any halachically binding agreement.

After some deliberation, the younger man finally won her over and the two agreed to marry. The two of them held a quiet wedding and were blissfully happy. But this left the second suitor with the unpleasant job of informing his predecessor that the woman he thought would be his bride was no longer willing to marry him—in fact, she had already been married to another man.

When the first man was apprised of this, he was furious. "Don't you know that halachically you are considered a rasha for this? You should divorce her since she agreed to marry me and not you!"

When this question was raised before the Halachos Ketanos, zt"l, he replied, "We find in Kiddushin 58 that in a case where one who sends an agent to propose to a woman for him and the messenger proposes for himself instead, the woman is nevertheless married to the messenger.

The Gemara explains that although the messenger is a trickster, what he did took effect. This implies that although he acted falsely, he is not considered an absolute rasha for having betrayed his trust and absconded with the sender's intended. "Although that sugya is not discussing where they were already betrothed, we can also explain that our case is better than that of the Gemara of a messenger who has not apprised his bride that there was another man who wished to marry her.

In our case, there was no halachic obligation for the woman to marry the first man. Although what the couple did was not right, it is definitely a binding marriage and they need not dissolve it." (1)

[1] שו״ת הלכות קטנות, חלק ב׳, סימן רפ״ו

Ben Harris writes:[13]

On ***our daf***, we encounter a mishnah that teaches the following:

One who betroths a woman with terumot, or with tithes, or with gifts (to priests), or with the water of purification, or with the ashes of purification, she is betrothed, and even if (the man betrothing her is) an Israelite.

According to the mishnah, a man can betroth a woman with terumah, tithes or gifts designated for priests even if he is an Israelite — i.e. a non-priest. On its face, this is a curious law. Non-priests have no rights to these items, so it's hard to understand why a non-priest would be allowed to use them for the purpose of betrothal.

The Gemara is confused by this as well, and its first assumption is that the mishnah is talking about the right of discretion — that is, the right to direct tithes to a particular priest. This right has a value and it is that value that the non-priest is using to betroth the woman. Remember, betrothal can be done with anything worth more than a peruta, the smallest unit of currency in mishnaic times. So while the value of discretion might not seem like much, it doesn't have to be for it to be used in betrothal.

If this sounds familiar, that's because we countered this concept back on Nedarim 84, where the Gemara tried to figure if discretion actually has value or not. Today's daf is going to go over some of this same material, but first the Gemara notes that this understanding of the mishnah presents a problem for Ulla, who holds explicitly that the benefit of discretion does not have a monetary value. How then does Ulla understand what the mishnah is saying?

Here (the case is) with an Israelite who came into untithed produce from the household of his mother's father, a priest, and (the mishnah) holds that gifts that have not been separated are considered as though they have been separated.

Ulla's contention is that the mishnah is dealing with a situation in which the non-priest has inherited the items in question from his maternal grandfather, who was a priest. (The priesthood is passed down through the paternal line,

[13]Talmud from my Jewish learning

so while his mother was born to a priestly family, he does not inherit that status from her.) The non-priestly grandson cannot eat the produce, but he can sell it — or use it to betroth a woman.

Enter Rabbi Hiyya bar Avin, who inquires of his teacher Rav Huna if the benefit of discretion has value or not. Rav Huna replies that Rabbi Hiyya should know the answer to that question, since it was learned in the mishnah that a non-priest can betroth a woman with items set aside for priests, which indicates that in fact discretion does have value. Rabbi Hiyya then asks about Ulla's contention that the mishnah is talking about a case where a non-priest inherits produce from a priest. This prompts a terse reply from Rav Huna:

You're out.

Rashi suggests this means that Rav Huna is telling Rabbi Hiyya that he is outside the bounds of the conversation — that is, he's wrong. But Rashi also notes that the word hootza'ah (from the Hebrew root meaning "exit") can refer to the thin leaves of a palm tree, which might have been Rav Huna telling his student that he's a lightweight. Either way, the Gemara tells us that Rabbi Hiyya was embarrassed by this comment, which prompts Rav Huna to quickly try and recover.

Rav Huna said to him: This is what I said: Rav Asi, from the town of Huzal, stands in accordance with your opinion.

Rav Huna tells Rabbi Hiyya that he wasn't insulting him, but merely indicating that his opinion is the same as Rav Asi, who hails from the town of Huzal, which sounds a bit like the word for exit/palm leaf. Whether that's actually true or just some quick thinking on Rav Huna's part to save face (or protect Rabbi Hiyya's feelings), we can't really be sure.

What we can be sure of is that Rabbi Hiyya (and apparently Rav Asi from Huzal) aren't wrong at all. The Talmud goes on to tell us that everyone agrees discretion has no monetary value, and that the mishnah is indeed talking about a case of inheritance. Rabbi Hiyya's question was the right one. He was definitely not "out."

Terracotta Idols of Tabasco, From the Ancient Cities Of New Mexico, by Claude Joseph Desire Charnay

Money from the Sale of Forbidden Objects

Mark Kerzner writes:[14]

Money from the sale of forbidden objects listed previously is permitted for use, and betrothal with it is valid. Why**?**

Regarding idolatry, it says, "You shall not bring it into your house and become banned like it," which means that whatever you generate from the sale of idols is forbidden, but other money is permitted. But this may teach the rule, not an exception. - No, because there is another exception where money is forbidden: the fruit of the seventh year. Money from the sale of other items is permitted.

[14] https://talmudilluminated.com/kiddushin/kiddushin58.html

Come Work for Me

Rabbi Jay Kelman writes:[15]

A poor person who is examining a piece a cake and another comes and takes it from him is called evil." (Kiddushin 59a) All legal systems require that goods be legally transferred and deals become binding only when a formal mode of acquisition is made. In Jewish law - and these laws are discussed in the first chapter of Kiddushin - one acquires movables when we they are physically take them into one's possession[1] whereas land can be acquired by cash, the signing of a legal document or actions demonstrating ownership.

While Jewish law strongly encourages competition, to swoop in when another is just about to acquire an object or close a deal is strongly frowned upon - we do not issue the moniker evil lightly - though legally there is little one can do to prevent such[2].

[15] https://torahinmotion.org/discussions-and-blogs/come-work-for-me-kiddushin-59

Commentaries explain such applies only when the deal is just about done but the "paperwork" is not yet complete. But if negotiations are ongoing any and all can enter the fray. Thus if a seller has accepted an offer on a house but has yet to sign off on the deal it would be prohibited for someone to offer an extra $50,000 to get that home. Of course there is nothing untoward about having an open bidding process hoping that people will bid against another.

One can gain insight into the nature of the prohibition by analyzing a debate between Rashi and the Tosafists. Rashi claims that the prohibition of interloping (also) applies to an object which is *hefker*, an ownerless object not attainable elsewhere whereas Tosafot disagrees, specifically exempting *hefker* from this prohibition. If one notices a lost object first but his friend is a faster runner, according to Rashi this would not be the time for a race to the object whereas Tosafot argues that whoever actually picks it up first gets to keep it.

Rashi views the prohibition of interloping from the perspective of the victim. To snatch away something *hefker* which, by definition, cannot be acquired elsewhere reflects a serious moral failing. How dare one take away the anticipated gain of another? Perhaps it is for this reason that the prohibition is framed in terms of "a poor person" highlighting the impact on the victim.

Tosafot (Kiddushin 59a s.v. *ani*) disagrees claiming the prohibition applies only when the "poor person" wants to rent or buy something and another rushes in to buy that particular object. "Why does he go after that which his friend has put in effort, let him go and do business elsewhere?" But if the object is *hefker* i.e. is unavailable elsewhere "if he does not acquire this, what can he acquire?" It is clear that Tosafot sees the prohibition as one relating to the interloper. He should not take advantage of the efforts of others if he could relatively easily go and get another similar object. But if none can be had, what can we expect? Such is the nature of business that when there is only one object a deal is not a deal until finalized.

Of course such an approach is even more hurtful to the "poor"- and Rashi thus prohibits it - but Tosafot argues such is the nature of business.

While Tosafot claims that there is no prohibition of interloping on ownerless objects he agrees that it is prohibited to interfere with another's livelihood. A *hefker* object does not yet belong to anyone but to actually take away ongoing business of another would be prohibited. One would not be allowed Tosafot explains to try to hire oneself for a job occupied by another - even if one is may be more qualified for the job [3].

Similarly "stealing" clients of others is not sanctioned in Jewish law despite its widespread practice in the business world. One may advertise heavily hoping clients will take up your offer of services but it is the client who must make the first move.

Interestingly there is greater leeway for enticing an employee of another firm to join yours. While undoubtedly this will impact on your competitor the impact is less - it is generally easier to find a replacement worker than a new client, and any damages are indirect. Stealing a client has a direct impact on revenues whereas stealing workers does so only indirectly and perhaps not at all. Here too blanket dispensation is not given and please G-d we will have an opportunity to discuss this further when we reach the second chapter of Bava Batra.

[1] Why goods cannot be acquired by money alone is a subject we will leave for a future post.

[2] The fact that a court may not be able to address the situation does not change the fact that the person themselves should return the object even, Rav Moshe Feinstein (Choshen Mishpat 1:60) argues, if one interloped unknowingly. In the case Rav Moshe dealt with an applicant for a job who was under the impression that the employer would contact him, whereas the employer thought the applicant would call if interested in the job. The communication gap lead the job being offered to another person and when all realized what had happened Rav Moshe ruled the second person should not take the job instead letting the original applicant have the job.
[3] Whether an employer can fire a competent worker in order to hire an excellent one is a matter of dispute with most disagreeing with Rav Moshe Feinstein who prohibited such. While an employer may not be forced to retain an employee a third party has no right to suggest such.

Kiddushin Le-Achar Lamed Yom

Rav Shlomo Brin writes:[16]

Sources for the Shiur:

Kiddushin Le-Achar Lamed Yom (Kiddushin After 30 Days):

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[16] https://etzion.org.il/en/talmud/seder-nashim/massekhet-kiddushin/kiddushin-le-achar-lamed-yom

Mishna 58b "Ve-khen ha-omer le-isha"

Gemara 59a "Lo ba acher... u-mevatel devara"

Gemara 59b "Mekudeshet la-sheni... tzerikha"

Ketubot 82a "De-khi ata Rav Dimi amar Rav Yochanan... kani me-akhshv" and Tosafot s.v. Ha
Tosafot and Rashba 59a s.v. Af al pi she-nitakhlu

Ran (24a in the Rif) s.v. Rav u-Shemuel.

Ran (24b) s.v. U-ba.

The mishna states: "If one is mekadesh a woman so that the kiddushin should take effect only after thirty days [le-achar lamed yom] and, in the interim, she accepts kiddushin from another man, she is married to the second."

There are two possible explanations for this din:

1. Theoretically, one could have claimed that the kiddushin of the first had no effect whatsoever ,and it as if they never took place. Therefore, the woman is free to marry whoever she pleases.
2. The original kiddushin are valid and, had they run their course uninterrupted, they would have taken effect after thirty days. However, since in the interim the woman is not considered married, she can accept kiddushin from another man.

Rav and Shmuel [59a] agree that kiddushin le-achar lamed do take effect after the prescribed time period has passed, even if the kesef kiddushin is no longer in existence at this time. It is clear, therefore, that the first possibility is rejected, and kiddushin le-achar lamed yom are valid unless interrupted and nullified by a subsequent kiddushin within the thirty day period.

The Yerushalmi (3:1) goes a step further: In the case of the mishna, if the second man died or divorced the woman before the thirty day period had passed, the kiddushin of the first still take effect. In other words, even if a second kiddushin interrupted the first temporarily, since she is no longer married to the second man on the thirtieth day, the first kiddushin take effect.

According to the above, it is possible to distinguish between the physical act of being mekadesh the woman [ma'aseh ha-kiddushin] and its consequences [the chalut]. In general the relationship between ma'aseh and chalut is causal. The ma'aseh is the cause and the chalut is the effect. Accordingly, we must attempt to explain how in our mishna the chalut can be separated from the ma'aseh. (We are dealing with this problem from the limited perspective of kiddushin. For a broader picture, see Tosafot, Ketubot 82a s.v. Ha, Tosafot Yevamot 93a s.v. kenuya, Bekhorot 49.)

The Rishonim argue as to the extent a split between the ma'aseh and the chalut kiddushin actually exists.

Rashba and Ramban:

According to the Rashba, a distinction must be made between the physical transfer of the money [ma'aseh kiddushin] and the money with which the woman is mekudeshet [kesef kiddushin]. If the woman goes back on the kiddushin, she has to return the money to the man; therefore, by agreeing to the marriage, she benefits by not having to pay him back. Thus, she actually receives hana'a at the time the kiddushin take effect, and this hana'a serves as the kesef ha-kiddushin. Even though the ma'aseh ha-kiddushin takes place earlier, she is not mekudeshet with the money transferred then, but rather with the hana'a received le-achar lamed. Therefore, according to the Rashba, we can view the hana'a as the cause which effects the kiddushin.

Similarly, the Ramban explains that the woman actually receives the money on loan and it only becomes hers when the kiddushin take effect. This applies even if the money is no longer in her possession at the time. Kiddushin le-achar lamed differ from marrying a woman with an already existing loan, since in the former, the money is given be-torat kiddushin (see shiurim # 9 and # 13.) This explanation is similar to the Rashba: the kesef kiddushin is received at the time of the chalut. Whereas according to the Rashba the kesef kiddushin is the hana'a, the Ramban views the loan itself as the kesef kiddushin.

Ran and Ritva:

The Ran, in his commentary on the Rif, makes it clear that the woman is mekudeshet with the money she receives at the time of the kiddushin and there is no split between the ma'aseh kiddushin and the kesef kiddushin. This is precisely what the mishna is teaching us: It is possible for the ma'aseh to take place now even though the kiddushin will only take effect le-achar lamed. The Ran rejects the possibility that the woman receives the kesef

kiddushin at the time of the chalut as the gemara states that kiddushin take effect even if the money is no longer in existence at this time.

Also according to the Ritva, the ma'aseh kiddushin is fully completed when the money is physically transferred as the man expresses his intent to betroth the woman with the money, he gives her now. However, in distinction to the Ran, the Ritva explains that the women is mekudeshet with the hana'a she receives from being able to spend the money as she pleases and not with the actual coins themselves. This is despite the fact that she will have to return the money should she renege on the kiddushin at a later stage.

To gain a greater appreciation of this opinion, let us examine another source.

Kiddushin 60b: If a man divorces his wife le-achar lamed and the 'get' (divorce document) is destroyed before the allotted time passes, the divorce does not take effect. The same is true if one was mekadesh a woman le-achar lamed using a shtar, or if one transferred ownership of a field le-achar lamed using a shtar. The shtar must be in existence at the time of the chalut for the kinyan to take effect.

This is understandable according to the Ramban and the Rashba who hold that the ma'aseh cannot be separated from the chalut and, therefore, the initial transfer of the shtar cannot help to effect the gerushin le-achar lamed, if by that time the shtar has been lost or destroyed. However, this gemara seems to contradict the view of the Ritva and the Ran that it is possible to do the ma'aseh now even though the chalut only takes place le-achar lamed. One would have expected that the gerushin would take effect even though the get is no longer in existence.

In order to solve this problem, we must modify our understanding of the Ritva and the Ran. Even these two Rishonim agree that the chalut must be connected in some way to the ma'aseh. There can be no effect without a cause linked to it in some way. When the shtar is destroyed, this link is lost and the kinyan cannot take effect. It is for this reason, too, that there can be no delayed effect when using kinyan meshikha and kinyan chalipin, since the ma'aseh is momentary in nature, there is no cause that can affect the chalut thirty days later. However, kinyan kesef has a different status. As mentioned previously, if the woman decides to renege on the kiddushin she is obligated to return the money to the man. As a result, there is a remnant of the kinyan kesef at the time of the chalut, and this is the chiddush of Rav and Shmuel.

Tosafot (Yevamot 92b) express this viewpoint as follows: "Even though the money is no longer in existence, it is considered to be in the

possession of the seller since, if the kinyan does not take place, he is obligated to return it and it is considered to be in existence with regards to kiddushin." The Rashba (63a) and Tosafot (Ketubot 84a) use the same expression to describe the status of the kesef on the thirtieth day.

Therefore, kinyan le-achar lamed, according to all opinions, will only take effect if the kinyan is done with kesef. There is no distinction between kiddushei kesef and other kinyanim that are effected by kesef [such as the acquisition of property, for example]. It must be stressed, however, that a fundamental difference still exists between the opinion of the Ramban/Rashba and that of the Ritva/Ran. The former do not recognize the possibility of separating the ma'aseh and the chalut whereas the latter hold that it is possible to separate ma'aseh and chalut, as long as there is some sort of connection between the two.

Gradual Development:

Aside from the two basic explanations cited above, there is a third possibility that explains the din of le-achar lamed in a different manner: Instead of seeing the ma'aseh as taking place only initially (Ran), or only le-achar lamed (Rashba), one can view it as a gradual process. The ma'aseh kiddushin begin initially and becomes complete le-achar lamed. This, however, can only happen if there is some remnant of the original ma'aseh. Kinyan kissed fulfills this criterion as does kinyan shtar when the shtar has not been destroyed. Kinyan meshikha and kinyan chalipin, though, cannot take effect le-achar lamed as once the act is completed there is no continuation to which one can contribute the gradual process of the ma'aseh.

According to this explanation, there needs to be a continuous, uninterrupted link between the ma'aseh and the chalut. Therefore, if another man was mekadesh the woman before lamed, this link would be broken and even if he subsequently died or divorced the woman, the kiddushin of the first would not take effect le-achar lamed. This is in opposition to the opinion of the Yerushalmi. (see Rashba)

Summary:

We suggested three approaches to understand kiddushin le-achar lamed:

1. We view the ma'aseh kiddushin as taking place at the point of the chalut, on the thirtieth day (Rashba).

2. The ma'aseh takes place immediately but can nevertheless effect a delayed chalut (Ran).

3. The ma'aseh develops gradually. It begins right away, however is considered to be complete only on the thirtieth day.

For further study:

How are the various descriptions of le-achar lamed relevant to the argument between Resh Lakish and Rav Yochanan regarding retraction before the thirtieth day (59a)?

Love and Marriage, Love and Marriage, Go Together Like a—

Talmudic debates over marriage contracts are often predicated on linguistic precision, not human needs.

ADAM KIRSCH WRITES:[17]

Between the laws of levirate marriage, marriage contracts, divorce, and betrothal, the Talmud has more to say about the subject of marriage than virtually any other topic. Even Shabbat, the subject of two lengthy tractates in Seder Moed, is not so productive of laws and legal debates as marriage. This makes sense, because while Shabbat is the holiest day in Jewish life, its laws are commandments, not subjects for negotiation. When the rabbis say that Jews are not allowed to perform 39 categories of labor on Shabbat, there

[17] https://www.tabletmag.com/sections/belief/articles/daf-yomi-166

is no way for Jews to bring God to court and argue with Him about exactly what He intended. Marriage, on the other hand, is understood in Jewish law as a contract between two parties, the bride, and the groom, which means that it is capable of endless refinements and disagreements. Indeed, when talking about marriage law, the rabbis laid down many rules that can apply to any kind of contractual agreement—rules having to do with intention, agency, conditionality, and other complex matters.

In last week's *Daf Yomi* reading, the rabbis examined what happens to the betrothal process when it is made conditional on the performance of certain actions. This is a subject that came up extensively in Tractate Gittin, where the questions had to do with divorce: Can a divorce be made conditional on actions or payments? Can a husband make a divorce depend on his wife's acting a certain way in the future—for instance, continuing to care for their children, or prohibiting her from marrying a certain man? In that case, the general rule was that conditional divorces are not valid, since the essence of a divorce is that it completely severs the relationship between husband and wife. If some kind of obligation remains, then the relationship is not actually severed.

Now in Tractate Kiddushin, the Talmud looks at the beginning of the marital relationship, rather than the end. Marriage, we have seen over the last several weeks, is a two-stage process in Jewish law: First the groom must betroth the bride, then he marries her through a ceremony or through sexual intercourse. It is at the betrothal stage, of course, that most of the negotiation between bride and groom, and between their families, would take place. Such negotiations, though they may seem mercenary to 21st-century Americans, have been an important part of marriage in nearly all cultures until the very recent past. (The *Memoirs* of Gluckel of Hameln are a vivid record of how much energy and emotion was traditionally invested in such marriage negotiations, especially by Jewish mothers.) Of course, attraction and personal preference have always been an important part of why people get married, and the Talmud allows for the rejection of proposed brides or grooms on this basis. But love can't be codified, while property can; and so when the Talmud talks about betrothal, it is mainly talking about conditions having to do with money and land.

Chapter 3 of the tractate begins by asking about a case in which a betrothal is designed to begin at some point in the future. What if a man says to a woman "You are hereby betrothed to me after 30 days": Does the betrothal begin after 30 days have passed, or is it considered to have begun retroactively at the moment it was declared? Ordinarily this might not make much of a difference. But what happens if a woman accepts this kind of

delayed betrothal but then gets betrothed to a second man before the 30 days have elapsed. Is the second betrothal valid, or is it preempted by the first?

When the rabbis say that Jews are not allowed to perform 39 categories of labor on Shabbat, there is no way for Jews to bring God to court and argue with Him about exactly what He intended.

According to the mishna in Kiddushin 58b, everything depends on the exact language that was used in the betrothal. If the man said, "You are hereby betrothed to me after 30 days," then until the 30 days are up, the woman is a free agent, and if she accepts another betrothal, it is valid. But if the original suitor said, "You are hereby betrothed to me *from now* and after 30 days," things are less clear. Which condition applies, the "from now" or the "after 30 days"? And if the woman accepts a second betrothal, is it valid or not? In the Gemara, there is a dispute about this point between Rav and Shmuel. According to Rav, the two conditions create an irresolvable ambiguity, so that if a woman is betrothed in this fashion, her only way out is to receive a bill of divorce from the first suitor that entirely cancels their relationship. Shmuel, on the other hand, believes that this uncertainty only lasts for the specified term of 30 days. After the 30 days are up, the first suitor's claim is undoubtedly effective, and it supersedes the claim of the second suitor: "After 30 days the betrothal of the second is abrogated, and the betrothal of the first is completed."

To make the logical point clear, the rabbis resort, as they often do, to an exaggerated hypothetical example. Say that a man betroths a woman "from now and after 30 days," and then a second man betroths the same woman "after 20 days," and then a third man betroths her "after 10 days." Probably such a thing has never happened in the long history of the Jews—but if it did, the Gemara asks, which betrothals would be valid? The answer, according to Abaye, is that "she requires a bill of divorce from the first man and the last man, but she does not require a bill of divorce from the middle one." This is a way of dealing with both possible interpretations of the law. If the first betrothal went into effect after 30 days, it would outlast the other betrothals and cancel them out; and if the last betrothal went into effect immediately, it would cancel out the previous ones. In either case, however, the middle man's betrothal would be preempted, either by the prior man or the subsequent man.

Another kind of condition that can be placed on a betrothal has to do with money. If a man betroths a woman with the promise that he will give her 200 dinars, then they are betrothed immediately, provided he gives her the money. If, however, he promises to give her the money within 30 days, what is the status of the betrothal? Does it take effect right away, or not until the

money is delivered? And if the latter, what happens if the woman accepts a second betrothal before the payment is made—does this supersede the first betrothal? According to Rav Huna, once the payment is made, the betrothal effective retroactively from the moment it was stated; by this reasoning, a second betrothal would be invalidated. According to Rav Yehuda, on the other hand, the first betrothal is only effective from the moment the payment is made, so he would allow the woman to accept a second betrothal in the interim.

The Talmud goes on to examine other kinds of conditions related to money or real property. A man might betroth a woman contingent on his demonstrating that he owns a certain amount of money or land. In such a case, the money must belong to him alone, not to him and a partner; similarly, the land must be his outright, not part of a leasehold. A trickier situation arises when a man seeks to break an engagement on the grounds that he was under a false impression about the bride. For instance, "if he claims that he thought she was poor and she is wealthy, or wealthy and she is poor," is these grounds to annul a betrothal? The mishna in Kiddushin 62a says that it is not, provided that the woman did not actively lie about her status. Betrothal, as we have seen before, is a kind of purchase, and so the rule is *caveat emptor*—let the buyer beware.

The Interplay between Law and Narrative to Determine God's Will for Us

PETER S. KNOBEL writes:[18]

In *Parashat Yitro,* we are overwhelmed by the power of the encounter of God and the Jewish people at Mount Sinai. The people respond to God's Presence saying, "All that the Eternal has spoken we will do!" (Exodus 19:8). The thunder, lightning, smoke, and horn blasts that accompany the giving

[18] https://reformjudaism.org/learning/torah-study/torah-commentary/halachah-and-aggadah-interplay-between-law-and-narrative

of *Aseret HaDib'rot,* the Ten Commandments, are the most perceptible aspects of that moment. It is likely that few people who were there remembered anything but the smoking mountain and the Divine Presence. This week's *parashah, Mishpatim* (meaning "rules"), translates the experience into concrete legislation. In *The Torah: A Modern Commentary,* Rabbi W. Gunther Plaut divides this portion into three parts: laws on worship, serfdom, and injuries (21:1-36); laws on property and moral behavior (21:37-23:9); and cultic ordinances and affirmation of the covenant (23:10-24:18).[1.]

This law (*halachah*) is embedded in the story (*aggadah*) that the Israelites experienced. As the modern Jewish literary figure Haim Nahman Bialik wrote in his famous essay *Halachah and Aggadah,* "*Halachah* is the crystallization the ultimate and inevitable quintessence of *Aggadah*; *Aggadah* is the content of *Halachah."*[2] Robert Cover, a twentieth century Yale Law School professor, furthered this idea in his groundbreaking essay "Nomos and Narrative," where he wrote, "No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning."[3]

Jewish law and legal institutions are embedded in the stories of the Exodus from Egypt and the giving of Torah at Mount Sinai. The Exodus establishes an ethical method for evaluating particular legislation and the Sinai experience roots this method in Divine intention. In other words, God intends the law to create a just society with special emphasis on treatment of the weak and disenfranchised, categorized by concern for the widow, orphan (Exodus 22:21), and stranger (22:20), which is followed by a reminder our having been strangers in Egypt.

It is important to recognize that the meaning of the narrative changes over time to suit current circumstances. For example, the existence of slavery is taken for granted in our Torah portion, which may seem strange to the modern reader especially at this point in the narrative, as the Israelites have just been liberated from Egyptian bondage. However, careful examination of the passages suggests that while it is impossible at this stage to eliminate slavery the goal is to make it more humane (see, for example, 21:20, 26-27). The narrative therefore provides an ethical critique of the institution, which it cannot yet eliminate. In our own day, the ethical critique can be fully applied as to argue that slavery in any form can never be justified or considered humane, and that God's intent is human freedom and liberation. This understanding is in part a result of extending the text beyond the Exodus narrative to the Creation story, where we learn that every human being is created in the image of God (Genesis 1:27).

In Reform Judaism, the ethical critique of law dominates our interpretation of God's will. This is important because it is a major way in which we have sought

to understand halachah, traditional Jewish "law." While within Jewish jurisprudence there are a number of principles that enable halachic authorities to make changes based on altered conditions or new knowledge, the very nature of Jewish law as interpreted by traditional legal experts or responsa committees tends to be conservative. Even within Reform Judaism, the CCAR Responsa Committee has sometimes been more conservative than the Reform rabbinate as whole. The Responsa Committee performs a very important function of attempting to apply Jewish law to the questions, which are asked in a way that is both faithful to the halachic method and also to the Jewish narrative as understood by contemporary Reform Judaism.

We can use the narrative, which gives meaning, to simply dismiss what we do not like by using its principles in a casual manner or we can use the narrative to influence a careful decision-making process. I highly value interpretations with which I do not agree that are rendered by the CCAR Responsa Committee or published by the Freehof Institute for Progressive Halakhah because they are carefully reasoned. They provide material to be assessed and if I disagree, I must find a reasoned response based on a reading of sources.

One ongoing conversation in the interpretation of Jewish law revolves on the use of narratives, especially Talmudic narratives, to determine the outcome of controversial matters. For example, I have used the story of the martyrdom of Rabbi Chanina ben Teradionto argue for assisted suicide as a valid Jewish option in the case of terminal illness with intractable and unremitting pain. The story tells how the rabbi's executioner changed the position of the punishing flame and removed the wet wool that had been placed on the rabbi's heart to prolong his agony, so the rabbi would have a quicker, less painful death (Babylonian Talmud, *Avodah Zarah* 18a). My position on this issue has been very controversial especially because I use aggadic texts to justify it. The interplay between halachah and aggadah, between narrative and nomos (law), serves as powerful way to think about the values by which we live our lives.

1. W. Gunther Plaut gen. ed., *The Torah: A Modern Commentary, Revised Ed.,* (New York: URJ Press, 2005) pp. 511-512
2. Haim Nahman Bialik, "Halachah and Aggadah," in *Revealment and Concealment: Five Essays*, (Jerusalem: Ibis Editions, 2000), p.46
3. Robert M. Cover, "The Supreme Court, 1982 Term – Foreword: Nomos and Narrative" (1983). *Faculty Scholarship Series.* Paper 2705. See p.4

METAPHORS AND MARGINS

NIKKI LYN DEBLOSI writes:[19]

"This would be so much easier if the Rabbis didn't speak in metaphors!" one of my students observed. The Talmud might be Judaism's code of law, but its metaphors, stories, and individual cases outnumber its simple lists of dos and don'ts.

Mishpatim lists rules for an ethical society; amidst its instructions and how-tos lies a central, driving metaphor: "You shall not oppress a stranger, for you know the feelings of the stranger, having yourselves been strangers in the land of Egypt" (Exodus 23:9).

As a woman, a feminist, a lesbian, and a rabbi who serves a Hillel community made up of many "marginalized" students (in their sexual or gender identities, or in their non-Orthodox Jewish identities), I am inspired by our tradition's reliance on narrative and metaphor. After all, telling stories has long been a tool for political movements seeking societal change. Feminists held consciousness-raising meetings where women identified patterns of institutionalized oppression in what might have seemed isolated, personal cases. People of color spoke "truth to power," raising their voices and bringing stories of injustice into spaces formerly filled only with silence or violence.

When we Jews are commanded to remember that "we were slaves in Egypt," we are not commanded only to concern ourselves with the plight of the enslaved. This collective narrative of our people invites us to pursue justice for other kinds of marginalized persons as well: for the widow and the orphan, for example (see Deuteronomy 24:17-18).

The Torah builds an ethical system on a metaphor: being strangers in Egypt is in some ways "like" being an orphan or a widow. A metaphor makes connections across difference: the two items being compared are *similar*, though they are not *the same*.

It is precisely in that space between *similar* and *the same* that change happens. Metaphor allows us to address injustices the Torah could not have recognized: to open rabbinic ordination to women, for example, or to sanctify the relationships of gay and lesbian couples under the chuppah.

[19] https://reformjudaism.org/learning/torah-study/torah-commentary/halachah-and-aggadah-interplay-between-law-and-narrative

It would be easier if our sacred texts didn't speak in metaphor. But it is metaphor that has enabled the Jewish people to be ever vigilant in loving the "strangers" in our midst.

Mishpatim, Exodus 21:1-24:18
The Torah: A Modern Commentary, pp. 566-592; Revised Edition, pp. 511–538
The Torah: A Women's Commentary, pp. 427–450

Deceit and Trickery

One may not deceive or trick others when it comes to monetary transactions.[20]

Monetary Deceit

If one knows that one's merchandise is flawed or faulty, one must reveal this to the buyer. For instance, if one wishes to sell his home and he knows that the ceiling is full of mold because of a burst pipe but this is completely unnoticeable as the ceiling was recently painted, the homeowner must relay this information to the potential buyer. Although it would seem that withholding this information is not an outright transgression of stealing, for the buyer is erring on his own and the seller has not extorted money out of the buyer through trickery, this nevertheless constitutes the prohibitions of fraud and deception and is absolutely forbidden.

Similarly, if one wishes to sell his car and he knows that the car was involved in a serious accident which caused significant damage to the body of the car but the buyer knows nothing of this because he relies on the seller and trusts him completely, the owner of the vehicle must certainly bring such a defect to the buyers attention. Nevertheless, there are minor flaws which the seller need not bring to the attention of the buyer and in such situations, a prominent Torah scholar fluent in the monetary laws of Shulchan Aruch must be consulted.

This sometimes creates a great pitfall, for people do not always realize the severity of this prohibition. This is especially true regarding people selling cars

[20] https://halachayomit.co.il/en/default.aspx?HalachaID=3534

and conceal various mechanical and body issues for the sale to go through with ease. This is absolutely forbidden, as we have discussed.
Just as it is forbidden to deceive and trick a fellow Jew, it is likewise forbidden to deceive non-Jews.

Deceit Regarding Other Non-Financial Matters

Besides for the prohibition of deceit when it comes to monetary transactions, it is likewise forbidden to deceive others even regarding issues completely unrelated to money. It is therefore forbidden to trick another into believing that one is doing something for him when this is indeed not the case, for instance, if one implores his friend endlessly to eat with him and the individual inviting knows that the invitee will not sit to eat with him (because he is in a rush and the like) and he nevertheless continues pleading with him to do so in order to make it seem that he really wishes to honor his friend, this is considered a form of deceit and is forbidden. Many erroneously believe such things are permissible as a result of a lack of awareness of Halacha.

The Sefer Meirat Enayim (a commentary on the Choshen Mishpat section of Shulchan Aruch authored by Hagaon Rabbeinu Yosha Volk Katz who also authored the "Perisha" and "Derisha" commentaries on all four sections of Shulchan Aruch) writes that nevertheless, if one invites his friend to sit and eat without pleading and merely in a polite manner as is customary, even if one knows that the individual will not sit and eat, there is nothing wrong with this, for if one does not extend an invitation to sit and eat at all, it will be considered disrespectful.

Rachel and Leah: The Appearance vs. Reality of Hatred, Jealousy and Deceit Part I

This two-part essay explores Rachel and Leah's devotion to God, as expressed through three experiences that seem to the contrary. [21]

These are:

1. Leah's decision to go ahead with her father, Laban's deceitful plan for her marriage to Jacob (Genesis 29: 21-25)
2. Leah being referred to in the Torah as "hated" (Genesis 29:31)
3. Rachel's jealousy when Leah has children (Genesis 30:1)

A cursory look at Rachel and Leah may leave the impression that their story is one of hatred, jealousy, and deceit. This assumption is called into question, however, when we consider everything else the Torah tells us about their roles as wholly righteous women and founders of the Jewish nation. In addition, if we consider aspects of grammar, detail, and nuance in the Torah text, itself, we come to understand Rachel and Leah's story on a deeper, more truthful level.

By way of reintroduction to Rachel and Leah – originally Rachel was supposed to marry Jacob, Leah was supposed to marry Esav, and together the four were to establish the Jewish Nation. Being that Esav was not interested in participating in this task, Jacob assumed his responsibilities and, ultimately, Esav's intended partner, Leah.

In terms of the paths Rachel and Leah take to marrying Jacob, Rachel has an easier time. Her relationship with Jacob is natural, given it has been divinely decreed. Jacob loves Rachel upon meeting her and works for her father-in-law for a total of fourteen years (seven in the beginning and another seven after Laban deceives him) in order to earn the privilege of marriage. The Torah tells us that the first seven years seemed to Jacob "a few days because of his love for her (Genesis 29:20)." Jacob sees in Rachel the right partner for building the Jewish people, and the couple's deep connection reflects this understanding. This is a true match made in heaven.

By contrast, the circumstances behind Leah's marriage to Jacob are far more complex. Leah implores God through tears and prayer to change a heavenly decree that she marry Jacob's brother Esav. She does not know how, when or if God will give her another opportunity to contribute to the fledgling nation. Within this context, if we re-examine Leah's passivity in allowing Laban to substitute her for Rachel, her decision takes on a more purposeful, goal-oriented tone.

[21] https://torah.org/learning/women-class55/

>From Laban's point of view, he can easily assume that once Jacob discovers his ruse, he may either divorce Leah or make her life miserable in an unhappy marriage. While neither of these scenarios would be acceptable to any normal father, Laban is more concerned with his own agenda, and he in fact threatens to kill Leah if she refuses to walk down the aisle. Leah's decision to go along with Laban is not a response to his threat – given her caliber, she is not afraid to give her life for the right reason. She agrees because she senses Divine intervention in Laban's irrational scheme, precisely because it is so out of the ordinary. She feels obligated not to resist his plot and to let God work through Laban according to His will.

Jacob – himself a prophet who ultimately recognizes Leah's future as a Jewish Matriarch – remains married to Leah (and works another seven years for Laban in order to marry Rachel). The early twentieth century commentator, Michtav MeEliyahu reinforces the idea that Jacob comes to understand Leah's role as one of his partners in God's plan:

"Because [Jacob's] destiny was to become Israel, he had to marry Leah, and God arranged for him to do so contrary to his perceptions at that moment."

On a practical level, Leah's decision is not easy. As a righteous woman, she does not want to replace her sister as Jacob's wife (even though Rachel has given her the secret signals and agrees to the exchange). In addition, Leah knows that Laban's plan is no basis for marriage – above all a marriage that is responsible for the birth of the Jewish people. Leah's decision not to resist is grounded on her own prophetic knowledge that she is intended to be a matriarch. Her decision is inextricably tied to her sense that it is God's will she join Jacob in his nation-building. (To restate: Leah's prophecy is at the heart of her choice to be passive and to let the course of events carry her. Today in the absence of prophecy, we cannot be this passive, nor can we presume to know what God wants for us).

Once Jacob is married to both wives, the Torah tells us that he, "loved Rachel even more than Leah (Genesis 29:30)" and that, "Hashem saw that Leah was hated (Genesis 29:31)." The first verse does not imply Jacob hated Leah, but that he had a deeper, natural connection to Rachel because, as explained above, their match was divinely ordained from the start. Another interpretation of the verse, from the commentator Kli Yakar, is based on the Hebrew letter "mem." "Mem" can mean "more than," or it can mean, "through," which would make the sentence, "Jacob loved Rachel more through Leah." The Kli Yakar tells us this implies that Jacob loved Rachel even more "through" understanding the great sacrifice Rachel made for her sister by giving her to Jacob.

There are various interpretations of the verse, "Hashem saw that Leah was hated." One of the most compelling, from the midrash, is based on the fact that the text does not say Jacob hated Leah but says simply that Leah was hated. Within this context, the obvious question is, "who then hated Leah?" The midrash draws a connection between Leah's being hated and her initial association as Esav's intended. The Torah refers to Esav as, "the one who was hated," due to his undesirable behavior and his unwillingness to participate in spawning the Jews. In the Torah, the wife is often associated with her husband and his deeds. Being that the Torah sets forth Esav as "the one who was hated," Leah is also referred to this way, to indicate that she was originally destined for Esav.

Another implication behind the fact that only Hashem saw that Leah was hated is that there was no difference between the way Jacob treated Leah and Rachel. There was no sense of inferiority or superiority in their relationships. Given this absence of favoritism and based on our understanding about the nature of Leah's being hated, it seems strange that the Torah then tells us that because Leah was hated, Hashem gives her children as soon as she is married (Genesis 29:31). If Leah did not have the experience of being hated, why did Hashem find it necessary to compensate her with children?

In addition, the births of Leah's children cause Rachel – a wholly righteous woman – to become jealous of Leah, given that Rachel is still barren at this point in the story: "Rachel saw that she had not borne children to Jacob, so Rachel became envious of her sister (Genesis 30:1)." This statement seems to contradict what the Torah has already told us about Rachel's selfless decision to give Leah her own husband. Again, we must take into account additional factors in determining the precise nature of Rachel's jealousy.

Dante`s Vision of Rachel and Leah

Dante Gabriel Rossetti

Rachel and Leah: The Appearance vs. Reality of Hatred, Jealousy and Deceit Part II

Leah conceived and bore a son, and she called his name Reuben, as she had declared, "Because Hashem has discerned my humiliation, for now my husband will love me."[22]

[22] https://torah.org/learning/women-class56/

And she conceived again and bore a son and declared, "Because Hashem has heard that I am hated, He has given me this one also," and she called his name Shimon.
Again she conceived and bore a son and declared, "This time my husband will become attached to me for I have borne him three sons;" therefore he called his name Levi.

She conceived again, and bore a son and declared, "This time let me gratefully praise Hashem;" therefore she called his name Judah; then she stopped giving birth.

(Genesis 29:32-35)

Our previous class explored the Torah's statement, "Hashem saw that Leah was hated, so He opened her womb," and gave her children. As mentioned, Leah is unaware of this hate. It is not a part of her relationship with Jacob, but is, rather, connected to her previous association with Esav. Our class concluded with the question, "If Leah does not experience being hated, why does Hashem find it necessary to compensate her with children?

In spite of not feeling hated, Leah is in anguish over whether or not she has done the right thing by marrying Jacob, in accordance with Laban's plan. She seeks approval for her actions, turning to Jacob for reassurance. Jacob is a logical choice, because of his righteousness and his ability to clearly discern between good and evil. These attributes are especially valuable given Jacob's place within the immoral milieu of Laban's household.

Hashem's response to Leah's anguish does indeed come through Jacob since Leah has children with him immediately after marriage. (By contrast, Rachel remains barren). The names of Leah's children provide clues to the direction of Leah's journey towards an understanding that she has in fact succeeded in aligning herself with God's will.

Leah calls her first son Reuben, from the Hebrew word "re'e," which means, "to see." This is the basis for the verse "Hashem saw my humiliation." God sees Leah's dilemma and responds by immediately granting her a child. This in turn indicates to Leah that her husband will also see her righteousness, will recognize that this is a proper marriage, with God's blessing – and will love her as a result.

Leah has a second son, Shimon. In the Torah verse announcing his birth she says, "Hashem heard that I am hated, so He gave me also this one." (The name Shimon is related to the Hebrew word, "shema" – to hear). With Reuben, her first child, Leah feels that perhaps she has fulfilled God's intentions. When

Leah has a second child before her righteous sister Rachel has had one, Leah sees it another reassurance from God. Her statement, "…He gave me also this one," reflects this fact.
Leah sees prophetically that Jacob and four wives will give birth to the twelve future tribes of Israel. When she has her third child, Levi, Leah assumes she has given Jacob her share of his sons – and that his three other wives will also have three children each. She states, "This time my husband will become attached to me for I have borne him three sons." The child's name – Levi – is related to the Hebrew word for "attach." This time, Jacob names his son, whereas Leah had named the prior two. Rashi tells us that, with two children, the woman carries one in each hand. With three, the husband must carry one, which provides impetus for a growing attachment between husband and wife, and a deeper unity in their relationship.

When Leah has a fourth child, she knows God has blessed her above and beyond her destined share in creating the Jewish people. At this point the Torah turns to Rachel and tells us she is jealous of Leah. "Rachel saw that she had not borne children to Jacob, and Rachel became envious of her sister (Genesis 30:1)." Our sages tell us that, rather than contradicting her righteousness, Rachel's jealousy is consistent with her stellar character. She feels God has denied her children because she has fallen short spiritually, while her sister has succeeded.

Rashi tells us that Rachel was certain Leah had earned the privilege of having so many children because of her superior righteousness, and that such envy is wholesome. In this type of jealousy we see the same Rachel who allowed her sister to take her place under the bridal canopy with Jacob, in order to spare Leah embarrassment. Rachel's jealousy reflects her desire to be a part of building the Jewish Nation and, for this reason it is admirable.

To return to Leah's fourth child, his name – Yehuda – contains "l'hodot," the Hebrew word for "praise." On a simple level, the name reflects Leah's thanks to Hashem for a child she did not expect, given that if the children had been divided equally between four wives this would be one more than her anticipated share.

On a deeper level, the thankfulness embedded in the name Yehuda expresses Leah's essence. From the start, Leah accepts her position, even in difficult times, with gratitude that is based in her trust in God. Each time she gives birth, Leah praises God stating, "Hashem listens to me," "Hashem will make me more beloved," "Hashem will give me the ability to unite fully with my husband." Often, Leah's words of praise and thankfulness are set forth in the future tense. This reveals a unique dimension of her gratitude. To thank God in good times when we get what we want is always meritorious. To thank God

before things go our way, or even when they actually do not go our way is a greater accomplishment – and Leah's specialty.
Leah's gratitude persists even in the midst of difficulty and in situations that may or may not go her way. This ability comes from her conviction that what is happening is right, given that it is coming from God.

Leah teaches us growth through acceptance. The power to accept leads to inner peace, no matter what the circumstances. This ability is not easy to cultivate and is no guarantee that life will be easy. Leah faced obstacles, which caused her great distress. At the same time, however, she was inwardly tranquil because of her belief th God was leading her in a necessary direction. As such, she remains a model for us of personal growth in the face of adversity and uncertainty. Leah's process with its ups and downs was never a source for misery.

Telling the Truth …and When It Is Permissible to Be Less Than Honest

Aryeh Citron writes:[23]

In the book of Genesis[1] we read how Jacob, heeding his mother's request, disguised himself as his older brother Esau so that he could successfully receive the blessings that his father Isaac had intended to give to Esau—despite the fact that Jacob was a spiritual giant and the paradigm of truthfulness. Indeed, the attribute of truth is most associated with our patriarch Jacob, as stated,[2] "Give truth to Jacob."

It seems that the pressing need to receive these blessings overrode the general prohibition against deception. This article will explore the importance of truth and the permissibility of deception under extenuating circumstances.
The Virtue of Truth

The Torah says: "Distance yourself from words of falsehood."[3] This is the only sin regarding from which the Torah warns us to "distance" ourselves.[4]

In telling the truth we emulate our Creator regarding whom it says: "The seal of G-d is truth."[5] The Sefer Chassidim writes that one who speaks only truth can actually change destiny by decreeing something to happen—and it will.[6]
It is evident from the Talmud[7] that being careful to only speak truthfully is a *segulah* (spiritually propitious activity) that allows one to complete the years allotted to him by G-d.
The Talmud says[8] that there are four groups of people that do not merit to greet the Divine presence. One of them is liars. This punishment is measure for measure: through lying they demonstrated that they sought to find favor in the eyes of men and in doing so, ignored the presence of the omniscient Almighty. Therefore, they do not merit to be in His presence.[9]

The Talmud also says[10] that there are three types of people that G-d despises. One of them is those that say one thing, while having completely different feelings in their heart.

On a very practical level, it is clear that when a person accustoms himself to speaking truthfully, people come to trust him, as the verse says[11]: "A true tongue will be established forever." On the other hand, one who is a habitual liar will not be trusted, as the verse continues: "But a lying tongue, just for a moment"; i.e., his believability is short lived.

Understanding the Permissibility to Lie

[23] https://www.chabad.org/library/article_cdo/aid/1049008/jewish/Telling-the-Truth-and-When-It-Is-Permissible-to-Be-Less-Than-Honest.htm

Despite the above, we find that in certain circumstances it is permissible or even commendable to lie. The reason for this is[12] that the biblical commandment against lying only includes a lie that will be harmful to someone else, as the verse says: "Distance yourself from words of falsehood; do not kill an innocent or righteous man." That is, it is forbidden to lie in a way that might cause death or harm to any person.

It is only by rabbinic law that it is forbidden to tell white lies as well, as the verse says[13]: "Indeed, they deceive one another and do not speak the truth; they have taught their tongues to speak lies, they commit iniquity [until] they are weary." And in the words of King Solomon[14]: "Distance falsehood and the lying word from me." Nevertheless, in cases of extenuating circumstances, as will be explained, the rabbis were lenient.

And we are told[15] that a lie told to promote peace (as shall be explained) is not included at all in the prohibition of telling lies. It seems then that since the ultimate goal of this lie is a positive one, it is not prohibited.

Examples of Permissible Lying

One may "change the truth" for reasons of peace.[16] We derive this from a conversation between G-d, Sarah and Abraham in Genesis.[17] Sarah said to herself: "After I have withered will I get smooth skin, and my husband is old." When G-d repeated her comments to Abraham, he said that Sarah had said: "How can I give birth when *I* am old." As Rashi[18] explains, G-d changed Sarah's words so that Abraham would not realize that Sarah had made a denigrating remark about him.

Aaron the High Priest would employ this method when he would try to make peace between quarrelling spouses and friends. He would approach one party and tell him that the other party really is sorry and wants to reconcile. When the person would hear this, he would express an interest in resolving the dispute. Aaron would then go to the other party and tell him this fact. At which point, everybody would make up.[19] The Rif[20] says that it's actually a mitzvah to lie in this way in order to maintain peace.

Other examples of permitted white lies include:

1. Changing the truth in order to practice humility. For example, one may claim ignorance of a certain talmudic tractate even if one does actually know it.[21]
2. Changing the truth in order to maintain modesty.[22]
3. Changing the truth in order to protect someone else from harm or inconvenience. For example, if a host was very gracious, and one is

asked about this, one should not tell all about his magnanimity as this may cause too many guests to flock to him.[23] On a similar vein, if a person has an incurable illness, and informing him of this will be detrimental to his health, it may be proper to withhold this information from him.[24]

4. A white lie said in order to protect someone from embarrassment. An example of this is that one may say that a bride is beautiful and gracious, even if she isn't particularly beautiful or gracious.[25]
5. Using exaggerated expressions if it is clear that it's an exaggeration.[26] For example: "You look white like a sheet."
6. There are some circumstances under which one is allowed to be deceptive in order to recoup losses that are owed to him. Our patriarch Jacob employed this method to protect his lawfully earned gains from being defrauded him by his father-in-law, Laban.[27] The details of this matter are beyond the scope of this article.[28]
7. If someone does something for himself, but another understands that it was done to honor him, one does not have to correct this misunderstanding. The Talmud[29] relates that several rabbis were traveling from one city to another. A rabbi who approached them thought that they had come to greet him. In such a case, the Talmud concludes, it is not necessary to correct the mistake.[30]

Exceptions to the Exceptions

- Despite these allowances, one should always attempt not to say an outright lie, but rather to tell half-truths.[31]
- Even in these cases, one should try to avoid lying to children, so as not to train them to lie.[32]
- Also, even in these circumstances, one should try not to lie on a constant basis.[33]
- The Magen Avraham[34] says that even in the above circumstances, one may only lie about the past but not about the future. For example, one may not say: "I will do such and such" in order to make peace. Others question this ruling.[35]

1. Chapter 27.
2. Micah 7:20 and Me'am Lo'ez ad loc.
3. Exodus 23:7.
4. Peleh Yo'etz, entry for Sheker.
5. Talmud, Shabbat 55a, Sanhedrin 64a.
6. Sefer Chassidim s. 47.
7. Sanhedrin 97a.
8. Sotah 42a.
9. Ben Yehoyada, ibid.
10. Pesachim 113b.
11. Proverbs 12:19.
12. Yera'im 235, as explained by the To'afot Re'em.
13. Jeremiah 9:4.
14. Proverbs 30:8.
15. Ritva on Ketubot 17a.
16. Talmud, Yevamot 65b.
17. Chapter 18.
18. On the Talmud, Bava Metziah 23b.
19. Ethics 1:12 and Bartenura ad loc.
20. Bava Metziah 13a (in the pages of the Rif).
21. Bava Metziah, ibid.
22. Ibid.
23. Ibid.
24. See Encyclopedia of Jewish Medical Ethics by Avraham Steinberg entry Disclosure of Illness to the Patient.
25. Talmud, Ketubot 17a.
26. Piskei Teshuvot 156:21.
27. See Pardes Yosef Parshat Vayeitzei no. 66 and in the sources he quotes there.
28. See Pitchei Choshen ch. 6 of the Laws of Loans note 5.
29. Chulin 94b.
30. See Code of Jewish Law, Choshen Mishpat 228:6.
31. This can be derived from the language of Bava Metzia and Yevamot, ibid., where it says that one may "change" for reasons of peace instead of one may "lie" for reasons of peace.
32. See Talmud, Sukkah 46b.
33. Talmud Yevamot 63, as explained by the Maharsha. This seems to contradict Aaron's behavior, see above. But see Iyun Yakov on Yevamot for an alternate explanation
34. Orach Chaim 156 based on Sefer Chassidim 426.
35. Shulchan Aruch Harav, Orach Chaim 156:2, in parenthesis.

Halakha and Morality: A Few Methodological Considerations

Daniel Statman writes:[24]

This paper argues that the current discussion on the relationship between morality and halakha tends to confuse philosophical, historical, ideological, and jurisprudential issues. It claims that the philosophical question of whether or not morality is dependent on religion should be separated from the historical question of how Jewish thinkers perceived the relationship between divine command and morality and from the question of the actual role played by moral considerations in the history of halakha. Similarly, the jurisprudential question regarding the formalistic nature of the law should be separated from the internal, halakhic question regarding the weight that should be assigned to formalistic, as opposed to substantive, considerations in halakha. The only way to understand the role of moral considerations in halakha as an historical phenomenon is through comprehensive inductive research on the role of moral considerations in halakha together with an investigation into the way experts in halakha viewed this role.

Introduction

In recent decades, there has been an ongoing attempt to establish the thesis that morality plays an important role in the shaping of halakha.[1] The thesis is based on two arguments, one from the realm of moral philosophy, the other from the field of legal philosophy. I first present these arguments and argue that they fall short of establishing the desired conclusion. I then try to show that the entire strategy tends to confuse philosophical and historical issues, as well as ideological and jurisprudential ones.[2]

The point of view taken in this study is that of an observer, not of a participant. I wish to offer reflections on the relationship between morality and halakha as a philosopher or as a researcher, rather than as a member of the halakhic community, i.e. a "halakhist" or a rabbi. From this "external" vantage point, the discussion on the place of moral considerations in halakha is no different from the discussion on the place of moral considerations in other legal systems or on the place of moral considerations according to other religious viewpoints. In all cases, the point of view of the researcher striving for an objective understanding of a practice in light of general models will be different than that of those immersed in the practice under discussion and committed to it. The latter—in our case, makers, and interpreters of halakha—will obviously be

[24] https://jtr.shanti.virginia.edu/volume-6-number-1/halakha-and-morality-a-few-methodological-considerations/

able to contribute to the discussion, but only insofar as they also manage to take an objective position on their activity, to look at it from the "outside" and not only from the "inside."

I. Morality as Independent of Religion and Its Place in Halakhah

I mentioned that two arguments are intended to establish the role of morality in halakha: one in moral philosophy, the other in legal philosophy. I discuss the former in the present section and the latter in Section II.

The argument from moral philosophy runs as follows: since morality does not depend on religion, it does not depend on halakha either; hence, it has an independent role within halakha, which means that it can and often does override "regular" halakhic considerations. The argument typically starts with the well-known Euthyphro Dilemma, which asks whether an act is good because God wanted (or commanded) it or whether God wanted (or commanded) this act because it is good in itself. In our book, *Religion and Morality*, we argue that the idea that morality is dependent on religion can be understood in two principal ways: (A) that morality depends on religion for its very existence or validity ("strong dependence"); and (B) that morality depends on religion for its recognition ("epistemic dependence").[3]

According to (A), actions obtain positive or negative moral value because, and only because, God commanded man to perform them or to refrain from performing them. According to (B), the moral value of actions is independent of divine command, but without the help of God, human beings would not be able to identify, or fully identify, this value.[4] The conclusion of our discussion was that both views should be rejected, which means that morality is independent of religion, both in terms of its validity and in terms of human ability to grasp moral truth. To illustrate this point: Cain was under an obligation not to murder his brother although there was no divine command to that effect, and even without divine assistance, Cain was capable of knowing the wrongness of his murderous act. The argument under discussion concludes that just as morality is not dependent on religion, nor is halakha, which presumably leads to the conclusion that halakha can and, in fact, does recognize the independent validity of moral considerations, taking them into account in shaping its norms and in applying them to concrete cases.

However, this line of thinking is clearly defective. Even if it is true that morality is independent of religion, both metaphysically and epistemologically, it might still be the case that Jewish philosophers and *poskim* held the (erroneous) view that morality was entirely determined by divine command. The relation between morality and halakha is not an abstract, theoretical issue, but it

rather relates to a specific religious-jurisprudential tradition. The answer to the philosophical question of whether or not morality depends on religion is irrelevant to the question of how Jewish thought or halakha regards morality. The point can be generalized: the philosophical position that is taken concerning the relation between morality and religion cannot in itself ground any claim about the way in which different cultures perceived the status of morality and its role within their religious laws.

In response, one might suggest that we revise the previous argument to make it an historical one using the same general idea. The historical claim would be that, in the Middle Ages as well as later, Jewish philosophers explicitly denied that morality depended on religion.[5] This denial, so the argument would suggest, must have led halakhists to recognize the independent value of morality and consequently to give it an important place in their considerations. If halakha assumes something like Sa'adia's view about the rationality of the social commandments,[6] then it might be expected that it exercise a kind of moral-rational judgment that is independent of divine command and of halakhic norms. However, this response is unsatisfactory, because even if we replace the philosophical thesis ("morality is independent of religion") with an historical one ("the Jewish thinkers thought that morality is independent of religion"), it still teaches us very little about the actual role of morality within halakha.

Even if most halakhists and Jewish philosophers believed that, in some abstract philosophical sense, morality was independent of God, they might have thought that once the divine commands were issued, these commands bind the *poskim* in a way that leaves no room for any independent moral deliberation. Even the most stubborn positivists would concede that the validity of moral considerations that serve as the basis for legislation is not dependent on legislation itself. They would just add that from a legal point of view what is binding is the law itself, and not those (moral and other) considerations on which the law is based. Similarly, one might grant that the laws of the *Torah* are based on considerations that are intrinsically valuable but insist that these considerations carry no weight in the actual making and interpretation of halakha because once the written and oral *Torah* were handed over to the Jewish people, they became uncompromisingly binding, leaving no room for moral or other extra-legal considerations. According to this view, the requirement that halakhists ignore the moral aspect of many laws could be based on the idea that, given the moral and other perfections of God, and given human moral and epistemic imperfection, the best way for human beings to realize justice would be through meticulous adherence to halakha, with no attempt to interpret it (and surely no attempt to *revise* it) on the basis of their fallible understanding.

To sum up: Even if, metaphysically and epistemologically, morality is independent of religion, and even if most Jewish thinkers actually accepted this independence, nothing follows regarding the way in which they perceived the role of moral considerations in halakha or, more importantly, about the role actually played by these considerations in the halakhic activity.

II. Morality, Halakha, and Formalism

The second argument that seeks to establish the independent role of morality within halakha is based on legal philosophy, or, more precisely, on ideas about legal interpretation. The argument attempts to show that halakhic interpretation is non-formalistic, namely, that it relies on human judgment or human discretion. This is in contrast to formalistic interpretation, which does not involve such judgment but is governed by a set of rules, which logically are assumed to lead to clear answers to any halakhic question.[7] In the words of Avi Sagi, "Halakhic rulings are determined by reasons grounded in human judgment and understanding. Making a halakhic ruling is not a simple act of applying the written law to reality but involves a large degree of human discretion. This is true of both halakhic interpretation and legislation."[8]

The claim is repeated by different authors, and repeatedly illustrated by various examples. I have two comments to make about it. First, the fact that halakha is shaped, among other things, by value-based considerations does not mean that these considerations have moral content, and it certainly does not mean that this moral content is positive. The term "moral" is notoriously ambiguous. It indicates a specific category of reasons—i.e., "moral" versus "non-moral"—and it is in this sense that we say that some problem is a "moral" problem, and not, for instance, an economic or a political one. But it also indicates a positive evaluation within the moral field, such as when one says that "John is a moral human being" or when one says that "the laws of the Torah are moral." Back to the matter at hand: the fact that halakhic decisions are not a conclusion arrived at by a deduction from a closed system of rules, but that they inevitably involve human discretion and value judgment, does not mean that these considerations necessarily belong to the moral domain, nor does it mean that they have positive moral value. But this is precisely what the proponents of the view under discussion are trying to prove: that halakha is shaped by moral considerations from the moral drawer, so to say, which have positive value.

Second, and more importantly: As a jurisprudential argument, it is simply trivial. To be sure, halakhic interpretation is not a simple act of applying the written law to reality, but this is the case with all legal interpretation, and, in fact, with *any* kind of interpretation. How could anybody today think otherwise, i.e., think that the correct interpretation of literary or legal texts

can be reached via some kind of a logical deduction from a set of given rules? Who would seriously deny that legal interpretation involves more than formally "applying" rules? The "formalist" who holds such a position is merely a straw man with whom it would be futile to argue. Note, by the way, that formalism, in the sense discussed here, is not equivalent to positivism, because, as emphasized by Hart, even positivism recognizes that the application of legal rules is not a matter of logical deduction.[9]

If the claim that halakhic interpretation is non-formalistic (in the above sense) is trivial, why is it repeatedly made and why are new examples constantly recruited to illustrate it? It seems to me that the authors who do so have an ideological, rather than a theoretical, motive. Through emphasizing the non-formalistic nature of halakha, they wish to advance a particular approach to halakha, i.e. a moral-liberal-modern one. The logic behind this move runs as follows: various aspects of halakha today evoke moral discomfort—for example, the halakhic approach to the status of women. Revising the relevant laws would be ruled out by a "formalistic" approach to halakha which seems to leave no room for extra-halakhic considerations in the halakhic process. Hence, only a non-formalistic approach to halakha could make room for the desired revisions and reforms, as it allows "meta-halakhic" values in the interpretation of halakha, values such as human dignity, equality, and so on. Such values enable a moral interpretation of halakha where necessary, without undermining its authority. It is no wonder that most authors who emphasize the flexibility of halakha and the value it assigns to moral values belong, sociologically, to modern-orthodox circles and to thinkers on their "left." It is in their writings that one can find new and, at times, radical proposals regarding the status of women within halakha, the attitude toward non-Jews, etc.
The ideological and polemical nature of the literature under discussion is also evident from the fact that much of it followed events that raised doubts about the moral character of halakha, a notable example being the assassination of Israeli Prime Minister Yitzhak Rabin.[10] Whereas the claim that the halakhic interpretation is non-formalistic is trivial, the opposing claim, which describes halakhic interpretation as a "simple act of applying the written law to reality," is so embarrassing that it is hard to believe that anyone seriously upholds it.

It is difficult to see how anybody who ever studied halakhic *responsa*, all the more so if he actually composed such *responsa* himself, could think that the determination of halakha is guided by a formalistic system of rules, the correct application of which leads to a single outcome with no need to exercise judgment. The formalists, therefore, seem to be motivated by an ideology just like the non-formalists, though a contrasting one. While the modern-orthodox camp stresses the non-formalistic nature of halakha in order to *promote* various reforms, the ultra-orthodox camp cleaves to its formalistic

nature in order to *obstruct* them. The opposition to change stems from a worldview that is against modernity, perceiving it as a threat to religious faith and the halakhic way of life.

The ongoing debate about moral reforms within halakha is, therefore, best understood not as a jurisprudential debate on the nature of halakhic interpretation, i.e., whether it is formalistic or not, but as a normative debate about the proper role of moral considerations within halakha and more generally about the legitimacy and proper nature of reforms in halakha. In this debate, the non-formalistic nature of halakha should be taken for granted, with the realization that, in itself, it does not support any side of the debate.[11] Those who oppose reform have to base their opposition on substantive arguments in favor of a cautious and conservative halakhic policy in an era of increasing secularism, while those who support reform need to base their position on substantive arguments in favor of their own policies. Neither side can use the non-formalistic nature of the halakhah as a shortcut to the conclusion that they are advocating.

The analysis proposed here regarding the apparent debate about the formalistic nature of halakha applies also to the debate about the existence of meta-halakhic considerations. Here again, one camp makes a big fuss about the existence of such considerations and emphasizes that halakha comprises not only norms but also meta-norms, while the other camp either denies the existence of meta-halakha or seriously downplays its significance. Not surprisingly, the former group includes the modern-orthodox and those to their "left" while the latter group includes the ultra-orthodox. But, once more, just as with any other legal system, it seems ridiculous to deny that the legal system of halakha contains a meta-halakhic (or meta-legal) plane. That such a plane exists should be taken for granted by all sides in the above debate. What cannot be taken for granted and is indeed a matter of debate is the precise nature of the meta-halakhic norms and their relative weight in comparison to regular halakhic rules.

III. Halakha and Morality from an Historical Perspective

The fact that halakhic interpretation is not a simple deduction from a list of rules and principles is thus obvious. What is not so obvious lies neither in the field of religious or moral philosophy, nor in the field of jurisprudence, but in that of history. I refer to two historical questions: first, to what extent were Jewish thinkers in the past aware of the non-formalistic nature of interpretation? This question refers to the philosophical reflection of halakhists and philosophers on the nature of halakha. Even if halakhic interpretation is

not deductive-formalistic, it may well be the case that at least some halakhists were not aware of this fact, and among those who were aware of it, some might have ascribed different interpretations to it. This question is about the history of halakhic thought or, if you wish, the history of (Jewish) thought on halakha. It comprises two main sub-questions, namely: (a) To what extent, if at all, were Jewish thinkers aware of the fact that halakhic ruling necessarily involves value and moral considerations, and (b) if they were aware of this fact, what meaning did they ascribe to it?

The second historical question is to what extent has halakhic ruling been formalistic in practice. Here I am not using "formalistic" in the sense of a deductive manner of interpretation, as I did earlier, but in the sense of strict adherence to the written law and to precedents, in contrast to a ruling that leaves far more room for values and ideology within halakhic interpretation.[12] In this sense, a non-formalistic stance—or to use the contemporary term, an "activist" stance—is one that encourages a more creative interpretation of the written law, one that gives more weight in legal interpretation to the purposes of law. By contrast, a formalistic approach in the sense under discussion is a conservative approach which requires the courts to behave with restraint and to give decisive weight to the formalistic aspects of the law: to the written law, to procedures, to precedents, etc. Being formalistic or non-formalistic is a matter of degree, and probably every legal system has periods that are formalistic and periods that are less formalistic, as well as judges who are formalistic to a greater or lesser degree. Asking whether halakha is formalistic means asking about the legal policy of different *poskim* in different locations and different periods, asking to what extent they adhered to the letter of the law and to what extent they acknowledged the role played in halakha by values and goals. The only way to answer this question responsibly is by a cautious inductive study of the *responsa* literature, as we are dealing with thousands of rabbis living in different historical contexts, and with an endless number of halakhic responses on mundane as well as more dramatic subjects. One might predict with certainty that this study would not result in a yes/no answer. Some *poskim* will be found to be non-formalistic, creative, activist, while others will be found to be formalistic and conservative, preferring the letter of the law over its spirit. As indicated above, halakha seems no different in this sense from other legal systems.

In the attempt to draw conclusions about the degree of formalism in Judaism in general, or even in one specific *posek*, one must be careful not to draw sweeping conclusions from a limited number of cases. A conspicuously non-formalistic decision may serve as the key to understanding the general non-formalistic nature of some legal system, but it could just as well be an exception to the rule that clearly does *not* reflect the general picture.

Note that the characterization of a *posek* as non-formalistic, or as activist, still says nothing about the content of his non-formalistic considerations and, in particular, says nothing about the weight he assigns to positive moral considerations. Halakhic activism, in the sense described above, can be driven by clearly immoral considerations. An example can be found in the attitude of several contemporary *poskim* toward the status of non-Jews in the State of Israel, which is inspired by a racist perception of the difference between Jews and non-Jews. Rabbi Elisha Aviner states that "foreign groups among the residents of the State of Israel" should not be allowed to fill roles of "leadership in our State, of formulating its ideas and in determining ethical priorities," as this "diminishes or distorts the Jewish-Israeli expression that we uphold."[13] Similarly, Rabbi Tzvi Yehudah HaKohen Kook describes the inclusion of Arab representatives in the government as a "non-atonable disgrace and desecration of God's name." He states that "the formation of a government that relies on gentiles removes its strong, healthy foundation, and the entire construction is built on rotten foundations."[14] This halakhic line expresses a non-formalistic approach which is at the same time an immoral one.

This brings me to the third question within the historical discussion of the relationship between halakha and morality: what weight has actually been assigned to (positive) moral values in halakhic ruling? How wide is the phenomenon described by Menachem Elon of moral norms that constitute "a fundamental, decisive principle for creating and solving halakhic problems"?[15] At times, an explicit mention of moral considerations can be found, when *poskim* say that they take some position *because* it prevents suffering or promotes justice, etc. But such an explicit use of moral considerations is rare. In most cases, one has to read between the lines in order to find the presence of moral considerations, i.e. to speculate about the motives of the *posek* in selecting a specific line of interpretation among several others that were available to him.

Needless to say, those who claim that moral considerations play a significant role in halakha are not referring to *ex post* influence of such consideration, but to *ex ante* influence. They don't merely say that one ruling or another led, in practice, to a better moral outcome than other possible rulings, but that the relevant *posek* was motivated by a concern for morality and justice.

What follows from these comments is that producing a comprehensive picture regarding the role of moral considerations in halakha is a very challenging task. In light of this challenge, it is easy to understand the temptation to replace the comprehensive study that the project demands by attempts to make generalizations from a limited number of cases, a temptation warned

against earlier. To get a grasp of the actual role played by moral considerations in halakha, it is essential to examine a wide variety of cases and to explore the different ways they were treated by a wide variety of *poskim* and commentators. In this investigation, attention should be paid not only to cases in which considerations such as mercy, justice, etc. did play a role in determining halakha, but also to cases where one would have expected that such considerations play a role but, in fact, they did *not*.

It is interesting to notice in this context that several concepts frequently used to demonstrate the moral nature of "Judaism" actually fulfill a very marginal role in halakha, at least as explicit considerations. Consider, for instance, the belief that humans were created in God's image, very often referred to as one of the foundations of Jewish ethics.[16] A quick search of the Bar-Ilan University Responsa project, however, casts some doubt on this impression. The expression "in God's image" appears only 14 times among the thousands of responses in the above database, and even of these 14, most are not used as a basis for practical guidance![17] Moreover, in one of the very few responses in which it does play this role, the interpretation suggested is very far from the message promoted by those who emphasize God's image as central to Jewish morality.

I am referring to the answer by Rabbi Kook regarding cadaveric dissection in the study of medicine, where he rules that while corpses of non-Jews may be used, those of Jews may not. The reason he offers is that the prohibition against the disfiguring of corpses applies only to Jews because of all creatures, only Jews are truly in the image of God.[18] Regardless of the original intention of the Bible or of the Rabbis ("beloved is man, created in God's image"[19]), in the course of history the idea of man as created in God's image might have developed in a way that did not lead to an approach that acknowledges the intrinsic value inherent in all human beings, but instead led to the reinforcement of a particularistic, not to say a racist, view.[20]

Most writers who support the claim that morality has a central place in halakha seem to draw on the same, quite limited, list of examples. A prominent example is the Talmudic treatment of the rebellious son, which is indeed a powerful illustration of the potential influence of moral considerations on halakhic interpretation.[21] Among other things, in this Talmudic discussion (*sugya*), we find the extreme view taken by Rabbi Simon, who interprets the biblical law of the rebellious son in such a way as to make its application unrealistic, basing this radical interpretation on what seem to be moral considerations: "Does the law indeed dictate that because this boy consumed a*tertimory* of meat and drank half a lug of Italian wine his father and mother shall deliver him to be stoned? Hence such a thing neither occurred nor ever will be, and it is written only for the purpose of study" (*Sanhedrin* 71a).

According to a common interpretation, Rabbi Simon recognizes the contradiction between the biblical law and justice, and he interprets the former in light of the latter. Rabbi Yehuda reaches the same conclusion, probably driven by the same kind of moral motivation, relying on a very creative reading of the relevant verses. Rabbi Yonatan disagrees with both as he cannot accept such a radical interpretation of Scripture. Which approach better reflects the way halakha was shaped throughout history, that of R. Simon and R. Yehuda, or that of R. Yonatan? In Avi Sagi's opinion, "It would not be an exaggeration to say that Rabbi Yehuda and Rabbi Simeon's interpretation defeated that of Rabbi Yonatan."[22] For my part, I confess that I will be very happy if Sagi's claim turns out to be true, but in order to establish it, much more evidence would be necessary, which is not currently at our disposal. Rabbi Yehuda and Rabbi Simon remind us of the possibilities for moral interpretation of halakha, a very important reminder. Nevertheless, once again, a possibility that was realized on only several occasions in the history of halakha does not allow generalizations about the nature of halakha throughout history, nor about the way halakha is interpreted and applied today.

Conclusion

Contemporary attempts to show that moral considerations play a significant role in the making and the application of halakha tend to confuse philosophical, jurisprudential, historical, and ideological issues. Participants in these attempts wish to say something about the nature of halakha as it is actually played out in history and as it is still being played out, but the arguments they recruit to support this conclusion are of the wrong kind. They make philosophical arguments for the independence of morality from religion, which fall short of proving anything about the way particular religious traditions, including the Jewish one, perceive the relation between morality and their revealed law. And they make jurisprudential arguments for the inevitability of human discretion in legal interpretation, which fall short of showing that the kind of non-formalistic reasoning involved in halakha does, indeed, assign special importance to moral considerations.

I thus propose that we release the study of the relation between halakha and morality from both its philosophical and its jurisprudential contexts and regard it mainly as an historical project. One might of course want to talk about some abstract or ideal notion of halakha, but insofar as one wishes to talk about "real" halakha—namely, halakha as a defined historical phenomenon—the only basis for talking responsibly would be one gained after historical research. In other words, what is required for an adequate description of the role of moral considerations in halakha is a careful inductive investigation of the many

rulings of *poskim* living at different times and in different places. This investigation should not be subject to any contemporary agenda and should not be carried out on the assumption that there is one true notion of halakha or of Judaism into which all the various findings of this project must fit.

Finally, you may wonder what implications such an historical study might have for contemporary attempts to "moralize" halakha. In particular, might it not *block* such attempts if the findings show a relatively formalistic legal tradition leaving relatively little room for morality? I think not, because the fact (*if* it turns out to be the fact) that, in the past, halakha tended to be formalistic and less hospitable to morality does not mean that this approach must be retained in our times. The same is true of the non-liberal agenda and the possible discovery that, in the past, halakha *was* hospitable to moral and other values. When legal history does not fit a view about what should be done in the present, it is always possible to use the old trick and say that "times have changed." The normative dispute about the appropriate interpretation of halakha today and the place that should be given to moral considerations within this framework should be kept separate from the historical study of the role those moral considerations played in halakha *in practice*, as well as from the way in which halakhists and philosophsers perceived the nature and significance of this role.

Notes

[1] There is an abundance of literature on the relationship between morality and halakha. See, for example, the list of references mentioned in Louis Newman, *Past Imperatives: Studies in the History and Theory of Jewish Ethics* (Albany: SUNY Press, 1998), 238 n. 1. As regards the claim that morality plays a central role in halakha, see, for example, Eliezer Berkowitz, *Not In Heaven: The Nature and Function of Halakhah* (New York: Ktav,1983); Shlomo Fischer and Amichai Berholz, "Introduction," in *Derekh Eretz [Desired Mode of Behavior], Religion and State: A Collection of Articles and Lectures on Judaism, Government and Democratic Values,* ed. Amichai Berholz (2002), 14 (Hebrew): "The halakhic ruling has an ethical compass that does not allow a contradiction between what appears to be appropriate and what is ruled by Halakha"; Asher Maoz, "Jewish and Democratic Values," in Ibid., 64 (Hebrew): "The concept of human dignity is derived from the Jewish perception of man's creation in God's image…it is from this motif and from the commandment to imitate God's way that many laws pertaining to central human rights are learned: equality between all people, the sanctity of life and the obligation to save life"; R. Avraham Gisser, "The divine Soul Resides Within: On Respect for All Human Beings," in Ibid., 164 (Hebrew): "From the basic values that constitute Jewish Law and from the values that constitute the Jewish way of life throughout history, equality, value and respect for all people are in keeping with the different universal conventions concerning human dignity and with the Basic Law of Human Dignity and Freedom."

[2] These two arguments were central to a course entitled "Religion and Morality" that I prepared with Avi Sagi at Bar-Ilan University twenty years ago, and which I have taught many times since. The following discussion, therefore, is self-critical no less than it is critical of others.

[3] Avi Sagi and Daniel Statman, "Introduction," in *Religion and Morality* (Amsterdam: Rodopi, 1993).

[4] A different version of weak dependence is based on the frailty and vulnerability of moral motivation.

On this version, human beings find it hard to follow the dictates of morality without the help of religion. [5] For a defense of this claim, see Avi Sagi and Daniel Statman, "Divine Command Morality and the Jewish Tradition," *The Journal of Religious Ethics* 23 (1995): 49-68.

[6] Sa'adia Gaon, *Beliefs and Opinions*, ch. 3, in which Sa'adia claims that the moral/social commandments are determined by reason.

[7] Later on I point to a different use of this distinction.

[8] Avi Sagi, *Judaism: Between Religion and Morality* (Tel Aviv: Hakibbutz Hameuhad, 1999), 292 (Hebrew).

[9] H.L.A. Hart, "Separation of Law and Morals," *Harvard Law Review* 71 (1958), 607-608: "[The application of legal rules] to specific cases in the penumbral area cannot be a matter of logical deduction."

[10] See, e.g., Berholz, *Derekh Eretz,* 9.

[11] I made a similar point about the common use of the well-known story of Achnai's Oven by thinkers from the modern-orthodox stream, and further "left," according to which the fact that the Torah "is not in Heaven" strengthens the liberal approach to halakha, providing a basis for changes required in keeping with the times. But the fact that human beings have the authority to interpret halakha in accordance with current needs and challenges says nothing about whether it should be interpreted in a liberal or a non-liberal manner. In other words, the assertion that a divine voice (*bat-kol*) cannot influence halakhic ruling is procedural and in itself has no bearing on the desired halakhic policy. See my "Autonomy and Authority in Achnai's Oven,"*Mekhkarei Mishpat* [Bar-Ilan Law Studies] 24 (2009), 639-662 (Hebrew).

[12] This is the meaning of "formalism" that Menachem Mautner has in mind in his influential analysis of Israeli law, (*The Decline of Formalism and the Rise of Values in Israeli Law* (Oxford: Oxford University Press, 1993).

[13] Rabbi Elisha Aviner, "The Ethical Problem and the Demographic Problem," *Artzi* [*My Land*] 4 (1986): 31-32 (Hebrew).

[14] Rabbi Tzvi Yehuda HaKohen Kook, "Forum of Rabbis of Judea, Samaria and Gaza," *Gilayon Rabbanei Yesha* 12 (1994): 1-2 (Hebrew).

[15] Menachem Elon, "Ethical Principles as Halakhic Norm," *De'ot* [*Opinions*] 20 (1962): 62, 67 (Hebrew).

[16] See, for example, Asher Maoz, "The Values of Judaism and Democracy" in *Derekh Eretz*.

[17] My thanks to Suzanne Stone, who brought this fact to my attention.

[18] Rabbi Kook, "Responsa, Da'at Kohen," *Yoreh De'ah* 199 (Hebrew). Italics added. Rabbi Eliezer Waldenberg, an esteemed *posek* in medical ethics, quotes R. Kook in agreement in his *Tzitz Eliezer*, Chapter 14, Part 4 (Hebrew).

[19] Mishnah *Avot*, 3:14.

[20] Another concept that is used much less than would be expected given the frequency with which it is mentioned is *darchei no'am* (ways of pleasantness), based on the following verse in Proverbs: "Her ways are ways of pleasantness, and all her paths are peace" (Proverbs 3:17). Menachem Elon argued that we can see here "that a certain general moral principle constitutes a decisive, regulating factor in the way that essential halakhic laws are determined and interpreted" (*supra* note 15). However, the Bar-Ilan Responsa database shows that the above expression is mentioned only 27 times and, in most cases, refers not to any moral consideration, but to a book of that name, written by Rabbi Mordecai Halevi in Cairo of the 17th Century. These findings cast doubt of Elon's conclusion that *darchei no'am* is a "decisive principle in the creation and solving of halakhic problems" (Ibid., 67).

[21] For a broad analysis of the Talmudic interpretation of this law, see Moshe Halbertal, *Interpretative Revolutions in the Making* (Jerusalem: Magnes Press, 1997), ch. 2 (Hebrew). See also Sagi (*supra* note 8), 294 and Rabbi Eugene Korn, "Moralization in Jewish Law: Genocide, Divine Commands and Rabbinic Reasoning," *The Edah Journal* 5 (2006): 6.

[22] Sagi, (*supra* note 8), 305.